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CURRENT TOPICS

Final Report of the Evershed Committee

THE publication this week of the Final Report of the Committee on Supreme Court Practice and Procedure (Cmd. 8878; H.M.S.O., 11s.) is the fruit of six years of intense and detailed investigation into the cost of High Court litigation. The immense labour undertaken by the Committee can be gauged from the facts that in all nearly 440 meetings of the Committee and its twenty-one sub-committees were held, that oral evidence was received from twenty-nine different bodies and from 248 witnesses, and that written evidence from 146 organisations and individuals was also considered. The Committee's task was to inquire into the practice and procedure of the Supreme Court and to consider what reforms should be introduced for the purpose of reducing the cost of litigation and securing greater efficiency and expedition in the despatch of business. Their broad conclusion is that there is no single ready answer to the problem of reducing the cost of litigation. Nevertheless, there are a great many ways in which costs may be saved, on the general principle that the surest way to save costs is to avoid, wherever proper and possible, doing the things which are the cause of costs, and the report contains nearly 230 specific recommendations whose cumulative effect might well be great. The Committee stress, however, that those taking part in the administration of the law should come to regard it as their duty to exercise constant vigilance in the matter of costs, and they urge the importance of a "new approach" in which all concerned are more sharply aware of the burden of costs on the ordinary litigant and the general duty to reduce it.

The "New Approach"

To give impetus and form to this new approach, the Committee recommend an optional procedure distinct from the ordinary "action," eliminating some of the steps normally taken and defining the issues from the start. This they have found, as respects the Chancery Division, in an extension of originating summons procedure, and, as respects the Queen's Bench Division, in an analogous new procedure, based not on the originating summons but on the writ of summons. To supplement this, it is proposed that the powers of the master on the summons for directions should be considerably strengthened and robustly exercised with the object of cutting away all non-essential matter and confining the questions to be tried to the real issues. To facilitate this, the summons for directions would be postponed until after discovery is completed. With a report of this size and complexity, it would not be possible to mention here more than a small fraction of the many suggestions made by the Committee on such matters as pleadings, evidence, execution, procedure on appeal, or distribution of business in the High Court, but a summary of the major conclusions appears at p. 499, *post*, and we hope in later issues to examine them more fully. Particular interest, however, attaches to the proposal for a "leap-frog" system of appeals direct to the House of Lords in a limited class of cases and to the recommendation to

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empower the Attorney-General to authorise the use of public funds to enable points of law of exceptional public interest to be determined.

Counsel's Fees and Solicitors' Costs

SINCE counsel's brief fees and solicitors' profit costs account for roughly two-thirds of a bill, the Committee devoted considerable attention to these two items. While satisfied that barristers generally are not overpaid, they consider that refreshers should be related to brief fees by a fixed and descending scale, with an overall maximum for every completed day in addition to the first; that a descending fractional scale should be substituted for the existing "two-thirds" rule, but that fees generally of junior counsel should be reviewed and adjusted where necessary; and that the cost of more than one counsel should not be recoverable except where the master on the summons for directions has certified that the case is fit for two counsel. On the question of solicitors' costs, the Committee express strong sympathy with The Law Society's argument that to compel their members to fit their bills into the "straitjacket" of Appendix N was to lay altogether undue emphasis upon quantity rather than quality in their work, and was derogatory to the profession; but the fact that Parliament has ordained strict control of solicitors' charges precluded the Committee, in their view, from recommending more than a careful review and recasting of Appendix N so as to make it, consistently with its underlying principle, conform to modern conditions and reality. They do, however, propose that a solicitor should be entitled to deliver a lump sum bill to his own client in a contentious matter on the same terms and conditions as he can deliver a lump sum bill in a non-contentious matter.

The Late Professor Winfield

AN incalculable loss has been suffered by the legal profession throughout the English-speaking world in the death of Sir PERCY WINFIELD, Q.C., LL.D., F.B.A., at the age of 74. His achievements were mainly in the academic field, but before the 1914–18 war he practised at the Bar on the South-Eastern Circuit. After his service during that war with the Cambridgeshire Regiment, when he was wounded in action, he went back to Cambridge as lecturer in law at St. John's and Trinity, St. John's having been his own college where he had won the Whewell Scholarship and the McMahon Studentship and been placed senior in both parts of the Law Tripos. He was the first Rouse Ball Professor of English Law in the University of Cambridge (1929 to 1943) and Reader in Common Law to the Council of Legal Education (1938 to 1949). Of his many publications, those best known to students and practitioners are his edition of Salmond on Torts, his own Text-book on the Law of Tort, and Salmond and Winfield on Contract.

Planning Law Amendments: Compulsory Purchase from Individuals

A DETAILED circular (No. 41/53) issued by the Ministry of Housing and Local Government on 2nd July, 1953, sets out the basis on which transactions should take place as from 18th November, 1952 (except where an authority was otherwise committed before that date), having regard to the abolition by the Town and Country Planning Act, 1953, of development charge on projects begun on or after 18th November, 1952, and of the obligation to distribute £300,000,000 in respect of loss of development values, and to the Government proposal that payments should be made only when loss is actually sustained as a result of planning decisions or acquisition by a public authority. It states that the normal basis for compensation on compulsory purchase from private persons will be the current existing use value of the interest in the land save in the following special cases: (*a*) *Unfinished buildings.*—Where buildings were unfinished at 1st July, 1948, and fall within the provisions of s. 78 and are still unfinished, the compensation may be assessed on the basis of an assumed planning permission to complete the works. (*b*) *Land ripe for development on 1st July, 1948.*—In the case of land which the Minister of Housing and Local Government has certified as falling within s. 80, compensation may be based on the permission to complete the development. (*c*) *Mineral workings.*—Where the interest being acquired is an interest in respect of which a planning permission to win and work minerals is in force, certain modifications are made to s. 51 by the Town and Country Planning (Minerals) Regulations, 1948. Under the proposed amending legislation, compensation up to the full value of the admitted Pt. VI claim plus accrued interest will be payable by the Exchequer, subject to certain exceptions, in respect of all land which has been acquired by a public authority at existing use value before the passing of the main amending Bill, and a financial adjustment between the acquiring authority and the Exchequer is proposed.

Disposals to Private Persons

THE circular also states that disposals of land by local authorities to private persons should now take account of the fact that development charge will no longer be payable in respect of any subsequent development, and should therefore take place at current market value, the Pt. VI claim (if any) in respect of the interest being assigned to the purchaser. In view, however, of the Government's intention to limit compensation on planning refusal to 1947 values and to exclude compensation altogether in certain cases which will have to be defined in the main amending legislation, it is important that it should be made clear to an intending purchaser that he is buying at his own risk and that in his own interest he should safeguard himself by securing planning permission for any development which he proposes before buying the land. This is particularly important where, in view of the provisions of Pt. VIII of the 1947 Act, no Pt. VI claim attaches to land with development value. The circular also provides full details of the basis of transfers of land from one local authority or statutory undertaker to another, and of appropriations (other than in areas of comprehensive development within s. 83), transfers of land from a Government department to a local authority or statutory undertaker, transfers of land from a local authority or statutory undertaker to a Government department (other than in areas of comprehensive development within s. 83), and appropriations, transfers and disposals into and out of areas of comprehensive development within s. 83. In the case of charity land, the circular states that, where s. 85 applies, the compensation should be based on the prevailing use value of the interest in the land, subject to the effect of r. 5 of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919.

Interim Index

THE interim index which forms a supplement to this issue covers the half-year January–June, 1953, inclusive. Readers are reminded that the consolidated index to vol. 97 (to be issued in January, 1954) will supersede the present interim index, which is not therefore intended to be bound with the issues constituting vol. 97.

Procedure

XXV—ORDER 14 IN ACCIDENT CASES

"THERE are some things too plain for argument," said Lord Halsbury in *Jacobs* v. *Booth's Distillery Co.* (1901), 85 L.T. 262. The Lord Chancellor was speaking particularly of the most straightforward kind of action at law, the kind in which to state the plaintiff's claim is to establish it, so that to insist on the plaintiff's proceeding by dint of the elaborate formality of a trial in court on legally admissible evidence and after the full measure of interlocutory proceedings would, there being no dispute as to his entitlement to relief, but add delay and expense. The class of case, in other words, for which Ord. 14 of the R.S.C. was intended to provide. By virtue of that order a man with a simple undisputed grievance may sidestep the principal obstacles in the path of speedy justice; he may specially indorse his writ, or deliver with it his statement of claim, following it up, if an appearance is entered, with an application for summary judgment.

We have earlier described (see p. 238, *ante*) how the procedure by specially indorsed writ, having originally been available only when the plaintiff's demand was a liquidated one, was by degrees thrown open in other types of action, until nowadays any claim in the Queen's Bench Division, except one for defamation, malicious prosecution, false imprisonment, seduction or breach of promise of marriage or one alleging fraud, may be so indorsed. It is a corollary of this statement that, so far as the rules of procedure go, the facilities of Ord. 14 are potentially available in any Queen's Bench action with the like exceptions, for the rules as to special indorsement and as to summary judgment go hand in hand. All the members of a divided Court of Appeal in *Dummer* v. *Brown* [1953] 2 W.L.R. 984; *ante*, p. 331, would, we venture to say, have agreed with this proposition, though it is implicit in each of the three judgments that the indiscriminate use of the summary procedure, merely because it is technically competent, is not to be encouraged.

There are two formal safeguards against the abuse of Ord. 14. In the first place r. 1 requires the summons for judgment to be supported by an affidavit verifying the claim as indorsed on the writ and asserting a belief in the absence of a defence except as to damages. That this assertion ought to be taken seriously by the deponent goes, perhaps, without saying, though Vaughan Williams, L.J., in *Symon & Co.* v. *Palmer's Stores* [1912] 1 K.B. 259, at p. 264, had occasion to express the court's disapproval of the practice of applying for judgment, in cases where a defence was anticipated, merely for the purpose of inducing the defendant to disclose on oath what that defence would be, so that the plaintiff might the more easily prepare for trial. Secondly, if a plaintiff should apply under Ord. 14 in a case not within the terms of the order, or where in the master's opinion he knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, there is power to dismiss the application with costs to be paid forthwith by the plaintiff. This is the proper course for the master to take when he considers that the plaintiff knew of an arguable defence (*per* Lord Goddard, C.J., in *Pocock* v. *A.D.A.C., Ltd.* [1952] 1 T.L.R. 29).

But, quite apart from any question of abuse of procedure, there is still both the scope and the need for discrimination in deciding whether to employ Ord. 14 in a particular case. The recent case of *Dummer* v. *Brown*, *supra*, highlights some aspects of the problem. Before that case it might well have been said that, among the types of action which were emphatically not suitable for disposal by the summary method, were those arising out of road accidents. The negligence of an individual would not immediately strike one as being capable of verification by another's oath. And if the area of material fact were enlarged by the joinder of two defendants of whom one is alleged to be vicariously liable for the act of the other, the possibility of having both defendants excluded from defending the resulting proceedings on mere affidavit evidence would have seemed still more remote. Nevertheless, a majority of the Court of Appeal has now affirmed an order for summary judgment made in such circumstances, admittedly on very special facts.

The substantive point established by the decision is that there is no technical bar to the application of Ord. 14 to negligence claims, but all the learned lords justices hastened to add that the proportion of such cases which are suitable for summary procedure must be very small. Jenkins and Morris, L.JJ., thought that *Dummer's* case *was* suitable; Singleton, L.J., that it was not. Or, to put it more accurately, the majority considered that it was open to the judge in chambers, whose order they were reviewing, to give summary judgment in the particular case. The Ord. 14 jurisdiction is permissive, and the discretion is that of the judge (*Evans* v. *Bartlam* [1937] A.C. 473).

Mrs. Dummer's claim was pleaded under the Fatal Accidents Acts. As administratrix of her husband, who had died as a result of an accident to a motor coach in which he had been a passenger, she alleged negligence by the second defendant while driving the coach as the servant or agent of the first defendant, the coach owner. Appearances were entered and a defence delivered which denied negligence and put everything in issue except that the coach was on the highway on the day alleged and was owned by the first defendant and driven by the second.

The plaintiff, notwithstanding the defence, applied under Ord. 14 for judgment. It is to be observed that she could not have done this if the defence had particularised some positive issue of contention, for then she could not have sworn the necessary affidavit. What the plaintiff was able to swear was that in certain criminal proceedings against the second defendant arising out of the accident he had pleaded guilty to a charge of dangerous driving. He was in fact convicted and sentenced, but the relevance and admissibility of the plaintiff's affidavit on this point depended on the confession constituted by the plea of guilty. Evidence of the conviction was inadmissible (*Hollington* v. *F. Hewthorn & Co., Ltd.* [1943] K.B. 587), but the plea ranked as an admission against the defendant who made it. The plaintiff's affidavit concluded with a statement of her belief that there was no defence to the action save as to the amount of damage.

There was some criticism of this affidavit. For one thing it failed to state the deponent's means of knowledge, as is required by Ord. 38, r. 3. Again, so far as the report shows, it did not satisfactorily verify the relationship alleged to exist between the first and second defendants or that the driver was acting within the scope of his employment. But these defects were not relied on by the defendants. Indeed, their counsel admitted that when the accident occurred the driver was acting in the course of his employment as the first defendant's servant. Jenkins and Morris, L.JJ., both considered the affidavit, in spite of its imperfections, to be some verification of the claim, and pointed out that it had been open to either or both defendants to answer it by putting

on oath even a slight indication of some real defence on the issue of liability. They had not done that, but had rested on their uninformative pleading. "That being so," said Morris, L.J., "the second defendant had made an admission which was an admission of liability . . . Once liability as against him was established then an admission that he was acting in the course of his employment was enough to warrant giving judgment against both defendants." To Jenkins, L.J., it seemed eminently desirable that, there being no defence, costs should be saved by going straight to the issue of the quantum of damage. Morris, L.J., too, referred to the saving of costs and of public time and the time of witnesses. The assessment of damages had, by the order made in chambers, been left to a sheriff's jury summoned pursuant to a writ of inquiry. This is the primary method of assessment of an unliquidated demand prescribed by Ord. 14, r. 7A. That rule, however, allows as an alternative any means of ascertainment that the court or a judge may direct. Since all the members of the Court of Appeal thought that the suitability of a sheriff's jury to fix damages in a case under Lord Campbell's Act was open to question, an order was made, after discussion with counsel, for damages to be assessed by a judge of the High Court at Bedford Assizes.

Our description of the facts and decision in *Dummer's* case has, we hope, sufficiently indicated its unusual features. The exact circumstances—and we include in that term the form of the defence, the admissions both in the criminal proceedings and before the court and the absence of opposing affidavits in a case of equivalent complication—are so little likely to recur that we make bold to say with due respect that the dissenting opinion of Singleton, L.J., is likely to prove a safer guide for the future to those contemplating applying for summary judgment in a running down case than the opinions of the majority. Singleton, L.J., said: "I think that the provisions of Ord. 14, r. 1, are wide enough to cover this class of case, but I would keep it to the most simple case, and I would not apply those provisions to a case involving any sort of complication or difficulty." And later: "If there is to be a complete change in procedure, and if Ord. 14 is to be applied to an action for damages for negligence based on Lord Campbell's Act, the affidavit must be in proper form and sworn by . . . some person who can swear positively to the facts verifying the cause of action." Clearly the supporting affidavit must go beyond the common form in use in an action for debt, which is the readiest example of a claim "too plain for argument."

J. F. J.

Landlord and Tenant Notebook

ENFORCEMENT OF TOWN PLANNING RESTRICTIONS—I

Town Planning legislation, like Public Health legislation, is not immediately concerned with the rights and liabilities of landlord and tenant against and to one another, but is apt to disturb the harmonious relationship which the parties to a lease may have intended to create and to preserve. In each case, when demised property is affected, the attitude of the Legislature is very much that of "someone's got to hold the baby, and we don't mind who does it as long as it is done."

The enforcement machinery of the Town and Country Planning Act, 1947, has been the subject of a good deal of litigation, as witness the cases discussed at 95 Sol. J. 735, 96 Sol. J. 204 and 287, and 97 Sol. J. 237. But in each of these it was the validity of the enforcement notice which was in question; only in one case, that of *Burgess* v. *Jarvis and Sevenoaks R.D. Council* [1952] 2 Q.B. 41 (C.A.) (see 96 Sol. J. 204), were the rights and liabilities of landlord and tenant examined, and in the end nothing turned on those rights and liabilities.

The first defendant, originally sole defendant, in that case had built some houses in 1936 which contravened an interim town planning scheme, the development thus being at his risk. The plaintiff was tenant of one of the houses when, the 1947 Act having been passed, the second defendants, as town planning authority, set about enforcement. They served both the plaintiff and the first defendant with notice under s. 23 (1); the subsection says: "may within four years . . . serve on the owner and occupier of the land *a* notice under this section"; one would have expected to find either "notices" or just "notice." And the notice called upon the recipient to demolish the aforementioned sixteen houses (of which the plaintiff held only one), and restore the land to its condition before the aforementioned operations took place within five years after the date of the service of the notice.

The first defendant did not show fight at that stage. He "notified the tenants of the termination of their tenancies" (I see that the writer of the article at 96 Sol. J. 204 says that he served notice to quit, and I agree that this is probably what happened, as the report does show that the tenancy was a weekly one) and of his intention to demolish before the end of the year. The plaintiff, as any self-respecting tenant would, thought of the Increase of Rent, etc., Restrictions Acts, and, basing his claim on their provisions, sued for an injunction to restrain the first defendant from carrying out his intention. When the case came before Parker, J., in chambers, someone appears to have thought of certain provisions contained in the next section, s. 24 of the Town and Country Planning Act, 1947.

By subs. (5) of that section, which is entitled "supplementary provisions as to enforcement," provision may be made by regulations for applying, in relation to steps required to be taken by an enforcement notice under s. 23, sundry sections of the Public Health Act, 1936, including s. 289: "If on a complaint made by the owner of any premises, it appears to a court of summary jurisdiction that the occupier of those premises prevents the owner from executing any work which he is by or under this Act required to execute, the court may order the occupier to permit the execution of the work." And reg. 8 of the Town and Country Planning (General) Regulations, 1948, had made the desired application to s. 23 enforcement notices.

Parker, J., appears to have come to the conclusion that there was force in the plaintiff's contention, which was presumably that, being, in the words of the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (1), a tenant who by virtue of the provisions of that Act retained possession of a dwelling-house to which the Acts applied, he was entitled to the benefit of all the terms and conditions of the original contract of tenancy; and the learned judge granted an injunction restraining the landlord from demolishing the house "unless and until an order is made under s. 289 of the Public Health Act, 1936, as applied by s. 24 of the Town and Country Planning Act, 1947, by reg. 8 of the Town and Country Planning (General) Regulations, 1948."

I will deal with the effect of this later, first completing the story. The landlord appealed; and it was then that the

plaintiff or his advisers discovered a defect in the enforcement notice: it had omitted to name a time at the expiration of which it was to come into effect, as required by subs. (3) of s. 24. Counsel was given permission to raise this preliminary point on appeal and the council were added as second defendants, the writ being amended so as to claim a declaration against both defendants that the notice was invalid. This declaration was granted, the order made by Parker, J., being varied; and it is not astonishing that no argument was addressed to the Court of Appeal on any point dealt with by the judge below. Possibly the first defendant was ordered to pay part of the plaintiff's costs—the report does not mention the subject—but at all events, once the validity point had been discovered, landlord and tenant could forget their differences. (Notices relating to pre-July, 1948, development had to be served before 1st July, 1951; the invalid notice was served on the 19th May of that year, but could not, of course, be amended.)

This seems to be as near as we have got as regards authority on the effect of such notices on the rights under a tenancy, and the facts provoke thought on a number of points. To begin with, one may ask whether Parker, J.'s method of dealing with the problem was justified, and what would have been its consequences.

I may mention here that the "application" by the Town and Country Planning Regulations of s. 289 of the Public Health Act, 1936, while duly authorised by s. 24 of the Act, at first sight seems to be somewhat fatuous. A court of summary jurisdiction may "order the occupier to permit the execution of the work": but suppose that he does not? No sanction appears to have been provided. In an ordinary Public Health Act case possibly the landlord could bring himself within s. 288, making it a penal offence to obstruct "any person acting in the execution of this Act"; but s. 288 cannot be and has not been applied to Town Planning law.

This, of course, would not have absolved the tenant from his duty to comply with an injunction of the High Court; but it leaves the question whether there was power, in the circumstances, to grant such an injunction. For if the tenant's case was that s. 15 (1) of the Increase of Rent Act, 1920, guaranteed him possession of his home, the court must have been satisfied either that there was no such protection, or that the protection did not extend so far.

As to the latter, we now have the decision in *Marela, Ltd.* v. *Machorowski* [1953] 2 W.L.R. 831; *ante*, p. 280 (C.A.), in which it was held that a Public Health Act closing order did not deprive a controlled tenant of protection as regards security of tenure. It was part of the reasoning in that case (see *ante*, p. 309) that a Public Health Act order was merely one way of enforcing a nuisance order; this would apply to town planning notices with equal force, for the authority can, under s. 24 (1) itself, enter on the land and do the work and recover the expenses from the owner (not from his tenant).

But it would have been interesting to see what would have happened if the landlord had tried to meet the tenant's case, *in limine*, on these lines: "The Rent, etc., Restrictions Acts apply to a house *let* as a dwelling-house; having regard to the contravention of the development plan, I say that this house was or is not 'let'." Such an argument would, incidentally, meet a case in which a tenancy could not be or had not been determined by notice to quit or so determined in time to enable the landlord to carry out the work before term expired. But, while such cases as *Minister of Agriculture and Fisheries* v. *Matthews* [1950] 1 K.B. 148 show that the grantor of an apparent tenancy may, despite default on his part, turn round on the grantee and show that no tenancy was created, the basis of such decisions is that the grant was *ultra vires*, the grantor being unable to grant what he did not possess. The effect of a grant contravening the law is more difficult to determine, and deserves a separate article.

R. B.

FINAL REPORT OF THE COMMITTEE ON SUPREME COURT PRACTICE AND PROCEDURE

THE final report of the Committee on Supreme Court Practice and Procedure has now been presented to Parliament and was published as a Command Paper (Cmd. 8878) on 13th July.

The committee was appointed on 22nd April, 1947, under the chairmanship of Sir Raymond Evershed, then a Lord Justice of Appeal and now Master of the Rolls, to inquire into the practice and procedure of the Supreme Court and to consider what reforms should be introduced for the purpose of reducing the cost of litigation and securing greater efficiency and expedition in the despatch of business. The committee have presented three interim reports. The first, published in August, 1949, dealt with the jurisdiction of the county courts and with the problem of fixing dates for the trial of actions in the High Court. The second interim report, published in March, 1951, dealt with the procedure in admiralty cases, Chancery procedure, the *Annual Practice* and court fees. The third interim report, published in August, 1952, was concerned with the Durham Palatine Court. The final report now presented covers a wide range of subjects and extends to some 380 pages. The following summary indicates some of the major conclusions reached by the committee.

Problem of reducing the cost of litigation

The committee consider that there is no single ready answer to the problem of reducing the cost of litigation. They point out that steps may be taken in the course of proceedings in an action before it comes to the trial without its being realised that an addition is thereby on each occasion made to costs. There is no doubt that at the trial costs increase in direct proportion to the length of the hearing. The committee point out that the litigant who loses may be ruined by the costs of the case, and even the winner, if he is left with a large bill to pay, may think that his victory was too dearly bought. They conclude that the best and surest way to save costs is to avoid, wherever it is proper and possible, doing the things which are the cause of costs. They have, therefore, examined each of the main steps in a civil proceeding and have considered whether the step is necessary and, if so, whether the present method is the most satisfactory way of taking it. They conclude that there must from the start be some kind of new approach to litigation, divesting it of the traditional characteristics which are expensive to litigants. They urge that all concerned in the administration of the law should come to regard it as their duty to exercise constant vigilance in the matter of costs. To encourage this new approach they suggest that, particularly in the Chancery Division, greater use should be made of the procedure by way of originating summons. This, they think, would provide the occasion for a "stocktaking" by the master before the case is heard and the heavy expenses of trial are incurred. The object would be to promote the fullest use of the opportunities which already exist to limit the issues to be tried and dispense with oral evidence where documentary evidence would suffice. In the Queen's Bench Division similar objects would be attained by an analogous procedure using the writ

of summons. The committee think that, where neither of these methods would be appropriate, the opportunity for a "stocktaking" would be provided when the master (in London) or district registrar (outside London) hears the summons for directions as to the trial of an action. It is recommended that the court's powers on this summons should be strengthened so as to promote the greatest use of existing facilities for reducing costs. In order to make the process effective it is thought that (except in actions for personal injuries) the hearing of the summons should be postponed until the parties have disclosed all relevant documents in their possession.

As already mentioned, the committee recommend a much greater use of documentary evidence when the calling of witnesses can safely be dispensed with and hope that the judges may be able to take a more liberal view of their powers in this respect. In general, however, the committee do not favour any alteration in the English law of evidence, including the rules as to the exclusion of hearsay evidence.

Actions for personal injuries

The report gives separate consideration to actions for personal injuries in view of the fact that nearly 50 per cent. of all civil actions which come to trial, whether in London or at assizes, fall within this category. Several detailed recommendations give effect to the committee's general aim of requiring the issues that have to be tried to be defined at as early a stage in the proceedings as possible: for instance, each side should be required to disclose to the other, before the trial, the medical report of any doctor who is to be called as a witness. New arrangements are suggested (and have already been put into operation) to enable statements made by witnesses to the police and proofs of police evidence to be obtained by the parties in "running down" cases at an early stage in the proceedings.

Execution

The committee have made a searching investigation into the system of execution in the High Court. The main recommendation under this head is that, while execution in the High Court should not be abolished or replaced by a different system, steps should be taken to lessen the number of cases in which the additional burden and costs of High Court execution are imposed on judgment debtors in actions which could have been brought in the county court. It is accordingly proposed that, where the judgment is for less than a certain amount, a plaintiff who executes in the High Court should be unable to recover any costs of execution or, as the case may be, should be unable to charge the defendant with more than the county court scale of costs.

Appeals

Appeals constitute an important factor in the cost of litigation. The committee accordingly put forward a scheme to enable selected cases to "leap-frog" the Court of Appeal and go direct from the High Court to the House of Lords. This procedure should be available, on a certificate from the trial judge, in any case which raises a question of substantial legal or public importance which either (1) is covered by an earlier decision of the Court of Appeal which it is desired to test in the House of Lords, or (2) relates to the construction of a statute or statutory instrument. The committee recommend that the "leap-frog" scheme should be reconsidered with a view to its extension after a period of three to five years.

The committee make a number of recommendations about the procedure on appeal to the Court of Appeal. They consider the court should do it all can in proper cases to avoid the necessity for a new trial, but dissent from the recommendation of the Porter Committee on the Law of Defamation that the Court of Appeal should have power to substitute their own award of damages for the damages awarded by a jury: in the committee's opinion a party should not be deprived of his constitutional right to have damages assessed by a jury merely because the Court of Appeal disagrees with the amount awarded.

Litigation at the public expense

The committee's terms of reference required them to consider what machinery could be evolved to enable points of law of exceptional public interest to be determined at the public expense. On this the committee recommend that, where the Attorney-General considers that a case raises a point of this kind, he should have power to issue a certificate authorising public funds to be used to assist the parties to prosecute the case. The parties' means would be disregarded in determining whether assistance should be given and it would be for the Attorney-General, when granting a certificate, to specify the scale on which assistance would be afforded. The parties would be left to contest the case in their own way, but the Attorney-General would have the right to appear and be heard on the question of law involved and, if he so desired but with leave of the court, to intervene and become a party.

Limitation and assessment of costs

Although some of the committee think that the present system of charging and recovering costs of itself gives rise to a tendency to incur costs on an extravagant scale and to drive the other party to do likewise, the committee do not recommend for adoption at the present time any of the suggestions made to them for restricting the costs which are chargeable or recoverable. They hope that the procedural reforms which are recommended elsewhere in the report will have the desired effect of eliminating extravagances and securing economy in the conduct of litigation, but they think that if this view proves wrong, further consideration should be given to the limitation, by reference to scales of costs or otherwise, of the costs recoverable by one party from another. The committee consider that costs in litigation should continued to be charged broadly in accordance with the system at present in force, but that the appropriate rules should be revised to make them accord with modern conditions.

Counsel's fees

The committee are satisfied that barristers generally are not overpaid for the work that they do, and they reject suggestions for controlling fees by making them subject to review by an officer of the court or a professional body. On the other hand, in order to safeguard the litigant and his solicitor, the committee recommend that the Bar Council should expand its rules of etiquette into a code of proper professional conduct (a recommendation which has already, in part, been carried out) in order to deal with such matters as the late marking-up of fees or late return of briefs. The committee think that the position with regard to refreshers is in need of review. They suggest that, in default of express agreement evidenced by marking on the brief, refresher fees should be related to brief fees by means of a fixed and descending scale, with an over-all maximum for every completed day in addition to the first. The committee also think that the litigant may fairly complain of the working of the so-called "two-thirds" rule as it operates in the case of high fees. The committee recommend that a descending fractional scale should be substituted for the existing two-thirds rule, but that, in view of the sacrifice involved, the fees payable to junior counsel generally should be reviewed and, where necessary, adjusted. A further important recommendation is that a successful party should not be able to recover from his opponent the cost of more than one counsel unless the master on the summons for directions before the trial has certified that the case is fit for two counsel.

Distribution of business in the High Court

The committee think that at the present time there are no sufficient grounds for abolishing the Probate, Divorce and

Admiralty Division and creating a new combined Admiralty/Commercial Court, but if, as a result of the recommendations of the Royal Commission on Marriage and Divorce or otherwise, the divorce jurisdiction ceases to be a part of the existing Probate, Divorce and Admiralty Division, the opportunity should then be taken for considering again the question of establishing a combined Admiralty/Commercial Court.

Addendum to report

Sir Thomas Barnes, Mr. Crowther, Mr. Fletcher and Professor Marshall contribute an addendum to the report, in which they say that on certain of the committee's proposals they are prepared to go further than their colleagues, particularly in regard to the control of counsel's fees. The majority of the committee think that, while the disciplinary body of the Bar should have power to direct the remission of fees found to have been exacted in contravention of the barrister's professional code, fees should not otherwise be subject to review. The authors of the addendum criticise this proposal on the grounds (1) that it would be difficult to prove a breach of the code, and (2) that it would be invidious to solicitors to require them to make allegations of impropriety against members of the Bar. They accordingly recommend that if the appropriate fee cannot be agreed when a brief is delivered it should be marked with a provisional fee, which should be subject to review either by a body set up by the Bar Council or by the taxing master. They also disagree with the proposal that the two-thirds rule, suitably modified, should be retained; in their view, except where the leader's fee does not exceed fifty guineas, a junior counsel should be paid a proper fee commensurate with the amount of work done and the responsibility he takes and not one which is dependent upon the chance that a leader has been engaged. As regards refreshers, the minority agree with the scales suggested by the remainder of the committee, but think that these should be maxima within which the taxing master should operate. They would abolish the rule that leading counsel may only appear with a junior, which they consider to be a restrictive practice without sufficient justification.

The signatories of the addendum agree that the question of fusion of the Bar and the solicitors' profession is outside the committee's terms of reference, but think that this is a matter which should be considered forthwith by an appropriate body set up for that purpose. They say that the division of the legal profession into two distinct branches is an obvious peculiarity of the English system which invites criticism and which requires to be rationally and convincingly justified. They also think that the question of partnerships between barristers should be considered by the Bar Council and recommend that further consideration should be given to the question of maintaining the rule that there is no direct contractual relationship between counsel and his client so that a barrister cannot be sued for negligence.

Finally, Sir Thomas Barnes and his co-signatories think that the circuit system and the possibility of decentralising the Supreme Court should be reconsidered. This, they say, is tied up with the question of fusion, but they stress that they do not suggest that either fusion or decentralisation is desirable, but only that these matters require early investigation.

HERE AND THERE

CRIME AND PUNISHMENT

ONE of the oddest things about a certain class of professional humanitarian is the contrast between their tender understanding focused on the killer and the cosher, and the bitterness of their malice towards anyone who happens to believe that the more obvious methods of discouraging the activities which our crude and ill-informed forefathers used to call crime have not yet wholly outlived their uses. Indeed, there have been moments in the recurrent controversies on capital and corporal punishment when one gained the impression that the same people, who would like all prisons to be barless and who would allow no punishment more severe than a term of occupational therapy, would gladly gibbet the Lord Chief Justice and almost all the judges of the Queen's Bench. Perhaps they ought to see a psychiatrist about it. Perhaps it is just the normal peevishness of the ageing and the elderly. For the more extreme theories of what the law-abiding ought to put up with in general trouble and forced contributions for the benefit of the violent and the unsocial can no longer be said to be the challenge of clear-eyed youth flung in the teeth of the tottering idols of an outworn creed of legalised violence. Ignoring for a moment the enormous vested interest that has sprung up in putting those theories into practice, one can say that youth is now thinking along somewhat different lines. I noticed with some amusement recently that certain representatives of the vanguard of the future 'teenage delegates of youth organisations, meeting at Luton, reached the unanimous conclusion that corporal punishment was a more effective way to prevent violent crime by juveniles than resort to Borstal training or probation. One eighteen-year-old went so far as to suggest that a thrashing, preferably in public, would hurt their pride so much that they would remember it longer than a prison sentence. For some time now it has seemed probable that capital punishment was in for another mass assault along the Christie-Evans line, but even assuming the report had disclosed the worst in a tragic miscarriage of justice, the most that it could have provided for the storming parties would have been yet another emotional smoke-screen. No one seems to have used the holocaust of innocent lives in the Wealdstone rail smash as an argument for abolishing railways. Every human activity has its fatal accidents, and, paradoxically enough, capital punishment, as practised in Britain, seems to have fewer than most.

DISSATISFIED CUSTOMER

THE Lord Chief Justice told the guests at the recent Mansion House dinner that the tide of violent crime appears to be on the ebb. This he attributed in great measure to the firmness of the Home Secretary early in the year in resisting the calculated pressure put upon him to recommend the remission of the death penalty in a sensationalised murder case. Lord Goddard himself still contributes unwaveringly to the discouragement of violence, as, for instance, in the remarkable case of Stanley Simpson, one of justice's dissatisfied customers. While serving in Durham Gaol a sentence of eighteen months' imprisonment received at the Northumberland Quarter Sessions, he decided that the discipline there was too strict. Feeling, doubtless, with Hilaire Belloc, that the men who live in the South Country are the kindest and most wise, he found an original method of migrating there by confessing to a series of sixteen offences committed in London: school-breaking, robbery with violence, robbery when armed with a knuckleduster, and in particular an incident when he robbed an elderly man in a fog of £22, leaving him unconscious and severely injured. Curiously enough, he felt that the sentence of six years' imprisonment imposed at the Central Criminal Court was an excessive recognition of these activities, and so he submitted to the Court of Criminal Appeal (Lord Goddard, C.J., Parker and Donovan, JJ.). He misjudged his tribunal, for instead he will now spend ten years comparing the penal methods of the sunnier south with the fortress conditions on the Northern Border. One fears that he, at least, will not agree with the Lord Mayor's estimate that the bench of judges are "the wisest, kindest and most understanding in the country's history." But, then, you can't please everybody.

CRUELTY AND MINK

No, you can't please everybody, and one fears that another class of the community who may view Lord Goddard with something less than enthusiastic approval are the wives and other female dependants of the wealthier business men. "For goodness sake," he said at the Mansion House, "don't give your wives mink coats. You will not be able to sleep safely if you do." (It might be retorted that they won't be able to sleep quietly if they don't.) The Chief was referring to the undiminished number of country house robberies and crimes of the same class. "It is extraordinary," he said, "how thieves get to know these things. If you have mink coats in the house you deserve to lose them." If his advice is taken, it may well diminish the work of the judges in the cri minal courts at the cost of increasing the work of the much overburdened Divorce Division, for the legal conception of cruelty has already undergone such startling developments that it is hardly possible to say for certain that the refusal of a mink coat might not be held to fall within that classification, not perhaps in the case of the average professional man or impoverished peer, but certainly in the class of the charmed circle of those who can afford the soundest advice on their sur-tax problems, for we have the authority of the House of Lords that cruelty must be judged in the light of the whole history of the marriage and that whole history must include the financial resources of the husband. The conduct complained of must be "wilful and unjustifiable"; it must be "inexcusable"; it must be "grave and weighty." The feminine vocabulary could find far more vivid terms than these to describe the wilful refusal of a mink coat by a husband admittedly not in a position to plead financial incapacity. Finally, the conduct must be such as to cause actual or apprehended injury to health, physical, mental or emotional, and old-fashioned specialist and up-to-date psychiatrist could, without a doubt, combine to describe in horrifying detail the physical effects at, say, a 1953 Ascot of the deprivation of the protection of mink, while the emotional effects of being obliged to put up with rabbit (Lord Goddard's suggested substitute) hardly bear contemplation. Yes, I fear he may have started some real trouble in the neighbouring Division.

RICHARD ROE.

BOOKS RECEIVED

Rayden's Practice and Law in the Divorce Division. Sixth Edition. Consulting Editor: C. T. A. WILKINSON, Registrar of the Probate and Divorce Division. Editors: F. C. OTTWAY, of the Probate and Divorce Registry; JOSEPH JACKSON, M.A., LL.B. (Cantab.), LL.M. (Lond.), of the Middle Temple, Barrister-at-Law, and of the South-Eastern Circuit. 1953. pp. clx, 1123 and (Index) 146. London: Butterworth & Co. (Publishers), Ltd. £4 4s. net.

Intestate Succession Tables. 1953. Published by The National Guarantee and Suretyship Association, Ltd., Edinburgh and London. Obtainable free of charge on application to the Association's offices.

Frederic William Maitland, 1850-1906. A memorial address by HENRY ARTHUR HOLLOND, Vice-Master of Trinity College, Cambridge, Emeritus Rouse Ball Professor of English Law, Honorary Bencher of Lincoln's Inn. Selden Society Annual Lecture, 18th March, 1953. pp. 23. London: Bernard Quaritch. 4s. net.

A Supplement to Factory Law. Fifth Edition. May, 1953. By H. SAMUELS, M.A., of the Middle Temple and Northern Circuit, Barrister-at-Law. 1953. pp. xxxii to xlii. London: Stevens & Sons, Ltd. 2s. 6d. net.

Kime's International Law Dictionary for 1953. Sixty-first year. Edited and compiled by PHILIP W. T. KIME. pp. xiv and (with Index) 510. London: Butterworth & Co. (Publishers), Ltd., and Kime's International Law Directory, Ltd. 15s. net.

The Law of Succession. Third Edition. By SIR DAVID HUGHES PARRY, M.A., LL.D., D.C.L., an Honorary Bencher of the Inner Temple, Professor of English Law in the University of London. 1953. pp. xxviii and (with Index) 348. London: Sweet & Maxwell, Ltd. £1 15s. net.

A Guide to Defamation Practice. By COLIN DUNCAN, of the Inner Temple, Barrister-at-Law, and ANTHONY HOOLAHAN, of the Inner Temple, Barrister-at-Law. Foreword by SIR VALENTINE HOLMES, Q.C. 1953. pp. (with Index) 76. London: Annalex Publications, Ltd., and Batchworth Press, Ltd. 17s. 6d. net.

Clark Hall and Morrison's Law Relating to Children and Young Persons. First Supplement to Fourth Edition. By A. C. L. MORRISON, C.B.E., formerly senior chief clerk of the Metropolitan Magistrates' Courts, and L. G. BANWELL, chief clerk of the Metropolitan Juvenile Courts. 1953. pp. xii and 115. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Planning Applications, Appeals and Inquiries. By A. E. TELLING, M.A., of the Inner Temple, Barrister-at-Law, and F. H. B. LAYFIELD, A.M.T.P.I. 1953. pp. 19 and (with Index) 406. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

The Law of Agricultural Holdings. Second Edition. By W. S. SCAMMELL, M.C., LL.B. (London), Solicitor of the Supreme Court, a member of Council of the Royal Institution of Chartered Surveyors. 1953. pp. xlii and (with Index) 602. London: Butterworth & Co. (Publishers), Ltd. £2 5s. net.

Oyez Practice Notes, No. 29: Solicitors' Costs and Funds in Bankruptcy. By MAURICE SHARE, B.A. Hons. (Oxon), of Gray's Inn and the North-Eastern Circuit, Barrister-at-Law. 1953. pp. 73. London: The Solicitors' Law Stationery Society, Ltd. 10s. 6d. net.

Final Report of the Committee on Supreme Court Practice and Procedure. Presented by the Lord High Chancellor to Parliament by Command of Her Majesty. July, 1953. pp. 380. London: Her Majesty's Stationery Office. 11s. net.

REVIEWS

The Rent Acts. By R. E. MEGARRY, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Seventh Edition. London: Stevens & Sons, Ltd. £2 10s. net.

A new edition of "Megarry" is as eagerly awaited by our profession as are new editions of evening papers by persons interested in a different kind of uncertainty; the difference being, in the case of the work under review, that no reader will be dissatisfied and, in so far as he may be unsatisfied, it is certainly not the author's fault. The number of new questions which can arise under and conundrums which are suggested by the Rent Acts (see judicial observations cited by Mr. Megarry in the preface to the sixth edition) continues to grow, and the decision in *Moodie* v. *Hosegood* [1952] A.C. 61 is far from being the only event to make the appearance of a seventh edition so welcome. The section dealing with Crown property has, in view of the enactment of the Crown Lessees (Protection of Sub-Tenants) Act, 1952, been virtually re-written. That on determination of statutory tenancy, which follows that on transmission on death (covering *Moodie* v. *Hosegood*), now suggests six, instead of four, ways in which a statutory tenancy may be determined. Two sections, one dealing with local authorities and the other with vendor and purchaser, which have been added to the chapter entitled "Miscellaneous Provisions," will be of special interest to conveyancers. And if in this review we have rather stressed the additions made, it is because "bigger and as good"

would more fairly characterise the seventh edition than would "bigger and better": no improvement in quality is called for in this case.

The Disposal of the Dead. By C. J. POLSON, M.D. (Birm.), F.R.C.P. (Lond.), Barrister-at-Law, Professor of Forensic Medicine, University of Leeds, R. P. BRITTAIN, M.A., B.Sc., M.B., Ch.B., B.L., LL.B. (Glasgow), Senior Lecturer in Forensic Medicine, University of Leeds, and T. K. MARSHALL, M.B., Ch.B. (Leeds), Lecturer in Forensic Medicine, University of Leeds. 1953. London: English Universities Press, Ltd. 21s. net.

In spite of its title, this book deals with what may properly be described as a live subject. The acknowledgments of help from outside sources occupy more than two pages, and an immense amount of research has evidently contributed to the production of this work. Besides funeral directors, those interested will include medical practitioners, registrars of births and deaths, medical referees of cremation authorities, coroners, police officers, ministers of religion and diocesan registrars. After an interesting historical introduction, the book consists of six parts dealing respectively with mediate disposal, cremation, burial, exhumation, embalming and funeral direction. This is not primarily a legal text-book and there is no table of cases or statutes. When dealing with the subject from its legal aspect, however, the distinguished authors are to be congratulated on their lucid presentation of an abstruse branch of the law.

TALKING "SHOP"

THURSDAY, 2ND *July*, 1953.

It is the usual and convenient practice of draftsmen to state, in a deed exercising a power of appointment, whether the appointor intends a revocable or irrevocable exercise of it. But, as appears from a deed that I was reading the other day, the practice is not universal; the question then arises whether the appointor—assuming that he or she had a choice—intended the appointment to operate revocably or irrevocably.

Most of the authorities, as I see, date from the early part of the eighteenth century and they seem to amount to this: that an appointor, who desires to reserve a power of revocation, must make his or her intention manifest in the instrument exercising the power. (For this purpose let it be assumed that the instrument is a deed; if it is a will or other testamentary document, a power of revocation can, of course, be inferred from the nature of the appointing document.)

The principle is succinctly expressed in the English and Empire Digest, vol. 37, at p. 484 (quoting *Hele* v. *Bond* (1717), Prec. Ch. 474; 24 E.R. 213, *sub nom. Heli* v. *Bond*, 1 Eq. Cas. Abr. 342 H.L.), as follows:—

> "One makes a settlement with power by deed to revoke it, and by the same deed or any other, from time to time to limit new uses; he revokes the settlement and limits new uses, but reserves no further power to himself; he cannot by virtue of the first power limit any other uses."

And it was put even more shortly by Lord Talbot, C., in *Hungerford* v. *Wintor* (1736), Amb. 839:—

> "If an appointment is made in the form of a will it is revocable in its own nature, but that is not the case of a deed without the power of revocation."

(See also *Duke of Marlborough* v. *Lord Godolphin* (1750), 2 Ves. Sen. 61, and *Lord Teynham* v. *Webb* (1751), 2 Ves. Sen. 198.)

WEDNESDAY, 8TH

Of s. 46, Finance Act, 1940 (levy of estate duty upon the assets of a privately-controlled company deriving property from the deceased, in the ratio that the deceased's benefits bore to the company's net income), Lord Simonds said in *St. Aubyn* v. *A.-G.* (No. 2) [1951] 2 All E.R. 473, at p. 484, that "it involves the consideration of provisions which are, I think, of unrivalled complexity and difficulty and couched in language so tortuous and obscure that I am tempted to reject them as meaningless."

Despite the many cases where s. 46 has threatened to apply, I can recall only a few where the Revenue have sought to apply it; consequently I have come to regard it as a *rara avis*. But it is quite otherwise with s. 55 and its associated sections (valuation of shares and debentures of a privately-controlled company upon the basis of the value of that company's assets); it is true that these sections take second place to s. 46 in complexity—not, perhaps, by a very wide margin—but they seem to be much more frequently invoked.

We have by now become accustomed to the notion that a "settlement," in the language of the tax-gatherer, includes a variety of transactions wholly foreign to a conveyancer's conception of a settlement; see, for example, the definition of that term in s. 21 (9), Finance Act, 1936, now s. 403, Income Tax Act, 1952, and *Thomas* v. *Marshall* (1953), *ante*, p. 316, wherein the House of Lords held that Post Office savings accounts and 3 per cent. Defence Bonds holdings which a father had put in the names of his infant and unmarried children were "settlements" as so defined. But it has not perhaps been so well advertised that s. 59, Finance Act, 1940 (definitions for the purposes of Pt. IV of that Act), defines "debenture" in no less elastic terms, with the result that certain debts of a controlled company, quite unrecognisable as debentures, are caught up by the section and thrown into the melting-pot of a s. 55 valuation.

Debts of this specious type which have, as it were, taken upon themselves the sheep's clothing of a debenture, include (in effect), under para. (*b*) of the definition, those incurred for any transfer of capital assets out of the ordinary course of a business carried on by the transferor; under para. (*c*) debts incurred for no consideration or an inadequate consideration; and under para. (*d*) interest-free loans and loans carrying exceptionally high or low interest rates. In the result, when one comes to examine the primary question of "control" under s. 55 (1) (*c*) with a view to determining whether

> "the deceased had at any time during those" [five years] "a beneficial interest in possession in shares *or debentures* of the company or both, of an aggregate nominal amount representing one-half or more of the aggregate nominal amount of the shares in *and debentures* of the company then outstanding . . ."

it is not sufficient to do a little sum in simple arithmetic with the holder's shares and debentures as the term "debentures" is commonly understood; one must add to the reckoning—as I understand it, both to the numerator and to the denominator—any debts masquerading as debentures under s. 59. In the result, it may be found, as I found in a recent case, that on the footing of simple arithmetic and basic English the section could not apply, but after letting in these bogus debentures it could and did. And this may be unwelcome news for a client who has given up his majority shareholding in the belief that by so doing he will have curtailed the operation of s. 55. One can only advise him to call in the loan and live for another five years.

WEEK-END REFLECTIONS

A little experiment in general knowledge of the working of the administrative National Insurance law (industrial injuries benefit), with acknowledgments to *Current Law* for February last, where the decisions may be found at para. 257.

Q. Which (if any) of the following accidents arose out of and in the course of the injured person's employment?

(*a*) A railway employee injured on railway property whilst on his way to catch a special railway employees' train to get to his place of work. (Decision No. R(I) 67/52.)

(*b*) A person who lit a cigarette whilst at work, which he was allowed to do, and was injured by the ensuing explosion, due to the presence of gas in the air. (Decision No. R(I) 68/52.)

(*c*) An employee who left her working place and walked to a nearby machine to show a photograph to a fellow worker and was there injured. (Decision No. R(I) 71/52.)

(*d*) A typist, injured whilst crossing a public road on her way back to work from the permitted morning tea-break in the canteen. (Decision No. R(I) 74/52.)

(*e*) A worker injured whilst moving some heavy slate slabs in pursuit of a coin that had rolled behind them. (Decision No. R(I) 78/52.)

(*f*) A fireman injured during a rehearsal of the brigade agility team (which he had joined voluntarily). (Decision No. R(I) 72/52.)

(*g*) A footballer, injured when voluntarily playing in a benefit match for his club captain. (Decision No. R(I) 80/52.)

Answer: Of these seven unfortunates, *held* that only the fireman and the footballer suffered injuries that arose out of and in the course of his employment. *Vive le sport!*

" ESCROW "

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

MASTER AND SERVANT: NEGLIGENCE: UNAUTHORISED MODE OF DOING AUTHORISED ACT

London County Council *v.* Cattermoles (Garages), Ltd.

Evershed, M.R., Birkett and Romer, L.JJ. 20th April, 1953

Appeal from Clerkenwell County Court.

The defendant company, who owned a garage, employed a man as a general garage hand. Part of his duty was to assist in getting motor cars out of the way of other motor cars. This he was instructed to do by pushing them by hand. He was expressly forbidden to drive since he did not hold a driving licence. He was instructed to move a van which was obstructing the access to the defendants' petrol pumps. He got into the van and drove it on to the highway with a view to driving it back into the garage. While on the highway the van came into collision with the plaintiff's van and damaged it. In these proceedings the plaintiff claimed damages. The county court judge dismissed the action, holding that in driving the van the man was doing an act wholly outside the scope of his employment and the defendants were not liable. The London County Council appealed.

EVERSHED, M.R., said that, applying the principle stated in Salmond on Torts, 10th ed., p. 89 (which was approved in *Canadian Pacific Railway Co.* v. *Lockhart* [1942] A.C. 591), the defendants were liable for the servant's negligence; in driving the van the garage hand was not doing something outside the scope of his employment, but what he did was merely a wrongful, improper and unauthorised mode of doing an act which was authorised by his masters.

BIRKETT and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *E. W. Eveleigh* (*J. G. Barr*); *F. C. Coningsby* (*Robbins, Olivey & Lake*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 997

RENT ACTS: DEVOLUTION ON DEATH: WARRANT FOR POSSESSION STATUTE-BARRED BEFORE DEATH

Mills *v.* Allen and Others

Evershed, M.R., Birkett and Romer, L.JJ. 18th June, 1953

Appeal from Redruth County Court.

The landlord of premises within the Rent Acts, occupied by a Mrs. Andrews as statutory tenant, applied to a court of summary jurisdiction under s. 1 of the Small Tenements Recovery Act, 1838, and, on 16th July, 1935, the justices ordered that possession be given within twenty-one days, but they directed that the warrant for possession should not be exercised so long as certain conditions were complied with. Those conditions not having been observed, the landlord applied on 31st January, 1939, for enforcement of the order. The justices made an order suspending the order for possession for a further period of three months on the same conditions, and in April, 1939, by a further order, they suspended the order for possession *sine die*. Mrs. Andrews remained in the premises paying rent until she died intestate in October, 1952. Since 1922 her niece, Miss Allen, had lived in the premises, and it was not disputed that, if Mrs. Andrews was a " tenant " within s. 12 (1) (*g*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, when she died, her niece would be entitled under that provision to succeed to that tenancy. The plaintiff, who became landlord in 1943, now claimed possession. The county court judge made the order, holding that the order for possession made in 1935 was a final order, and that, thereafter, Mrs. Andrews was not a " tenant " within s. 12 (1) (*g*), and that, accordingly, there was nothing which could devolve on her niece. Miss Allen appealed.

EVERSHED, M.R., said that, whatever the effect of the directions of the justices in 1935 on the then existing statutory tenancy, it was clear that the warrant for possession had ceased to have any efficacy some years before Mrs. Andrews died, by virtue of s. 2 (4) of the Limitation Act, 1939. Her continuance in the premises paying rent thereafter was only referable to there being in her either a statutory or a contractual tenancy and, irrespective of the exact nature of the tenancy, she, therefore, was a " tenant " when she died and her niece was entitled to succeed to that tenancy. His lordship considered, but did not decide, whether, having regard to *American Economic Laundry, Ltd.* v. *Little* [1951] 1 K.B. 400, there was any difference between the effect on the rights of succession under s. 12 (1) (*g*) of the Act of 1920 of an absolute order for possession and a conditional order, both being made under s. 1 of the Act of 1838. Commenting on the orders made by the justices, he said that an order for possession suspended indefinitely or an order for possession which was likely to be in suspense for a long time was not the best order to make, particularly where the circumstances indicated that there might be a claim to succession under s. 12 (1) (*g*). The defendant should be required to agree to pay the rent and arrears or to perform whatever other condition the court might think proper, that agreement being recited in the order; the court should then make no order for possession but should give liberty to apply for an order for possession on breach or non-fulfilment of the conditions. Then, if an order was made at all, it would be an absolute order operating at once and there would be no doubt as to its effect.

BIRKETT and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Humphrey Tilling* (*Gregory, Rowcliffe & Co.*, for *Peter Bray & Harris*, Redruth); *G. D. Petherick* (*Coode, Kingdon, Cotton & Ward*, for *Walters & Barbary*, Camborne).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R. 356

APPRENTICESHIP AGREEMENT: NO EXECUTION BY MASTER: ADOPTION AND AFFIRMATION TO THIRD PARTY

McDonald *v.* John Twiname, Ltd.

Evershed, M.R., Birkett and Romer, L.JJ. 23rd June, 1953

Appeal from Workington County Court.

An apprenticeship agreement was signed by the apprentice, Vincent McDonald, and his guardian, but not by the company instructing him, the defendants, though the name of the company was inserted with a rubber stamp in the agreement. About a year later, the apprentice was conscripted for military service, but he applied for deferment, and his formal application to the Ministry of Labour and National Service was supported by a certificate from the company that the conscript was serving as their apprentice, giving particulars and enclosing a copy of the

apprenticeship agreement. The copy was inaccurate in that it purported to have been fully executed by the signatures of all parties. Subsequently, the apprentice was dismissed summarily for insubordination and he brought proceedings claiming damages for wrongful dismissal. His claim was dismissed by the county court judge and he appealed.

EVERSHED, M.R., said, following *R.* v. *St. Peters-on-the-Hill* (1741), 2 Bott's Poor Laws 367, and *R.* v. *Fleet* (1777), Cald. Mag. Cas. 31, that as the company had acted on the agreement and had taken the benefit of the covenants by the apprentice, they must be treated as having executed it as a deed, even if, in fact, they had not done so, and accordingly that the deed was binding on them as an apprenticeship deed within the statute of Elizabeth I (5 Eliz. 1, c. 4, s. 25). Further, by affirming the contract to the Ministry of Labour and National Service, the company had shown that the rubber stamp insertion of the name of the company in the original agreement was made with the authority of the company, and that insertion was sufficient execution to constitute an entering into of a written agreement with the apprentice so as to satisfy the requirements of s. 2 of the Apprentices Act, 1814. On the facts as found, the apprentice might have committed a breach of the terms of the agreement, but that breach was not such as made the continued relationship of master and apprentice impossible, as in *Waterman* v. *Fryer* [1922] 1 K.B. 499 and *Learoyd* v. *Brook* [1891] 1 Q.B. 431, and, therefore, the master was not entitled, according to the terms of the agreement, summarily to dismiss the apprentice.

BIRKETT and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *John Thompson* (*O. H. Parsons*); *N. Sellers* (*Kenneth Brown, Baker, Baker*, for *Hayton, Simpson & Fisher*, Cockermouth).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[3 W.L.R. 347**

SUNDAY OBSERVANCE ACT, 1677: NOT APPLICABLE TO ESTATE AGENT

Gregory *v.* Fearn

Eversheds, M.R., Birkett and Romer, L.JJ. 24th June, 1953

Appeal from Nottingham County Court.

An estate agent, one Gregory, signed an agency contract on a Sunday for the sale of certain property. In an action for a commission which he claimed to have earned in accordance with that contract, it was held by the county court judge that, as the agency contract had been signed on Sunday, it was within the prohibition of s. 1 of the Sunday Observance Act, 1677, as having involved the doing of work in the ordinary course of business by a "tradesman." The agent appealed.

EVERSHED, M.R., said (BIRKETT and ROMER, L.JJ., agreeing) that an estate agent was not a "tradesman" or sufficiently like a tradesman so as to fall within the provisions of s. 1 of the Act of 1677. He considered *Palmer* v. *Snow* [1900] 1 Q.B. 725. Appeal dismissed (the judgment of the county court judge being affirmed on other grounds).

APPEARANCES: *T. R. Heald* (*Corbin, Greener & Cook*, for *Huntsman, Donaldson & Tyzack*, Nottingham).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 974**

CHANCERY DIVISION

VENDOR AND PURCHASER: FAILURE OF PURCHASER TO COMPLETE: APPLICATION BY VENDOR TO VACATE LAND CHARGES REGISTERED BY PURCHASER

***In re* Engall's Agreement**

Vaisey, J. 19th June, 1953

Adjourned summons.

By a contract of 31st July, 1952, vendors agreed to sell certain freeholds to purchasers. The purchasers did not complete on the date fixed, 20th September, and on 21st October the vendors gave them notice to complete by 5th November. On 4th November the purchasers caused to be registered against each vendor an estate contract of Class C (iv) under s. 10 (1) of the Land Charges Act, 1925. Completion did not take place, and in February, 1953, the vendors requested the purchasers to withdraw the registrations. They did not do so, and by a summons issued under s. 10 (8) of the Act the vendors asked for orders vacating the charges.

VAISEY, J., said that it was open to doubt whether the time for completion was, in the circumstances, long enough, and it might well be that the purchasers had acted wrongly in making use of the Act to put pressure on the vendors by preventing them from re-selling. But when the contract was made on 31st July, the purchasers became the owners in equity subject to the payment of the purchase money. The existence or non-existence of a contract at any relevant time was of the utmost importance, and ought to be considered carefully and in an appropriate manner, and it was inappropriate to use the vacating procedure of the Land Charges Act to obtain a decision on the existence or non-existence of the contract at any particular date or at the present time. The existence of the charges was the shadow, not the substance of the matter, which was the existence of the contract. The court was being asked to deal with the shadow. To ask that a charge be removed from the register before the existence or non-existence of the contract had been decided by the appropriate means of an action was wrong, and was putting the cart before the horse (see *Pedigree Stock Farm Developments, Ltd.* v. *R. Wheeler & Co., Ltd.* (1950), *Estates Gazette*, vol. 155, p. 66). Accordingly, the summons would be dismissed, with no order as to costs.

Order accordingly.

APPEARANCES: *G. C. Raffety* (*Champion & Co.*, for *Cozens and Moxon*, Hampton); *S. Stamler* (*C. Butcher & Simon Burns*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 977**

COSTS: HOSTILE LITIGATION BETWEEN TRUSTEES AND BENEFICIARIES: EFFECT OF ORDER FOR SOLICITOR AND CLIENT COSTS

***In re* Dargie, deceased; Miller *v.* Thornton-Jones and Others**

Vaisey, J. 25th June, 1953

Adjourned summons.

In an action brought by beneficiaries under a will to assert a personal pecuniary claim against the trustees, it was ordered that the costs of the defendant trustees be taxed as between solicitor and client, and when taxed "be retained and paid by the defendants in the action as trustees of the . . . will out of the estate of the . . . testator." On taxation, certain sums, amounting to £437, were disallowed. The present summons was taken out to ascertain whether the trustees were entitled to pay and retain out of the estate all or any part of the sum of £437, or ought to account for and refund the whole or some part of it to the estate.

VAISEY, J., said that the order was plain in its terms, and a taxation as between solicitor and client was not on an indemnity basis, but "substantially a party and party taxation on a more generous scale" (*Giles* v. *Randall* [1915] 1 K.B. 290, at p. 295). Trustees were generally entitled to their costs on an indemnity basis, if they had been incurred solely for the benefit of the estate, but there was no such general rule when the litigation was to define and secure the personal rights of the trustees as individuals. It had been suggested that, after such an order, the trustees might nevertheless reimburse themselves out of the estate; that was a most improper suggestion and amounted to a defiance and a disregard of the taxing master. Further, it was doubtful whether the right course of procedure had been adopted. The proper course would have been to have referred the matter back to the trial judge and endeavour to persuade him, though probably without success, that there had been a slip in the order. Alternatively, they might have applied to the taxing master, contending that in a solicitor and client taxation the beneficiaries should be on one footing, while the trustees should be on an indemnity footing, on the well founded principle that they ought not to be put to expense without reason. In *Poole* v. *Pass* (1839), 1 Beav. 600, an order was made to tax, besides costs, the trustee's "charges and expenses, properly incurred"; the absence of the latter words in the present order was fatal to the trustees' claim; moreover, if the trustees were right, the decision in *In re Robertson* [1949] 1 All E.R. 1042 would have been wholly unecessary. It followed that there must be a declaration that the trustees were not entitled to retain out of the estate the £437, and they must pay the costs of the summons as between party and party. Declaration accordingly.

APPEARANCES: *Lionel Edwards*, Q.C., and *W. A. Bagnall* (*Ballantynes*); *E. I. Goulding* (*Jaques & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 991**

PRACTICE: APPLICATION TO ENTER APPEARANCE AFTER FINAL JUDGMENT

Stern *v.* Friedman

Danckwerts, J. 26th June, 1953

Motions.

Up to 1939 the plaintiff and defendant were in partnership as food importers. In July, 1940, the plaintiff issued a writ claiming dissolution and the usual relief. Notice of the writ was served on the defendant in New York, where he lived. He did not enter an appearance, thinking that the war had terminated the business. In February, 1941, judgment was given, in default of defence, in accordance with the prayer in the writ. By a further order made in January, 1943, approval was given to the sale of the partnership goodwill to the plaintiff for £10. In November, 1943, the final order in the action was made. In 1953 the defendant applied for leave to enter an appearance, on the ground that the plaintiff had failed to disclose to the court material facts regarding the value of the goodwill; the master granted leave *ex parte*; the defendant then served on the plaintiff a notice of motion to set aside the order of January, 1943. The plaintiff then served on the defendant notice of motion to set aside the order for leave to appear, as having been improperly obtained *ex parte*. The defendant served a further notice of motion for leave to appear, in case the plaintiff's motion succeeded. All three motions came on for hearing together.

DANCKWERTS, J., after referring to Ord. 12, r. 22, a note to that rule at p. 141 of the Annual Practice, 1953, and Daniell's Chancery Practice, 8th ed., at pp. 295 and 296, said that he had been informed that a practice had grown up whereby a master of the Chancery Division would make an order *ex parte* giving leave to a defendant to enter an appearance after final judgment had been signed and entered. That practice was not correct; the correct practice was as stated in Daniell's Chancery Practice, *supra*, requiring that notice of the application should be given to the plaintiff or his solicitor. In the present case, the course taken was very undesirable, as the matter was very much out of time, and the plaintiff should have the opportunity of making submissions on it. The plaintiff's motion, accordingly, succeeded, and the appearance would be set aside. As to the defendant's motion for leave to appear, it was very much out of time; but he had given reasons which were some justification for the delay. He did not wish to set aside the final judgment, but only the order approving the sale of the goodwill to the plaintiff. That involved an allegation of fraud, which was a serious matter and involved proceedings by action and precise allegations in the form of pleadings and proper evidence; see note to Ord. 39, r. 6, at p. 699 of the Annual Practice, 1953. The defendant, accordingly, had his proper remedy by bringing an action, and it was unnecessary and inconvenient to allow him to appear in the old action in order to prosecute a claim of fraud on motion. Reference had been made to Ord. 27, r. 15, and to s. 62 of the Judicature Act, 1925, but they did not really affect the matter. Accordingly, the defendant's application for leave to appear and to set aside the order of January, 1943, failed. Orders accordingly.

APPEARANCES: *T. A. C. Burgess* (*Field, Roscoe & Co.*); *Charles Lawson* (*Forsyte, Kerman & Phillips*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 969**

QUEEN'S BENCH DIVISION

TENURE OF OFFICE OF COLONIAL JUDGE: EMPLOYMENT UNTIL RETIRING AGE

Terrell *v.* Secretary of State for the Colonies

Lord Goddard, C.J. 19th June, 1953

Special case stated by an arbitrator.

In 1930, the claimant, then in his forty-ninth year, was offered an appointment as a puisne judge of the Supreme Court in Malaya. He wrote to the Under-Secretary of State at the Colonial Office regarding the rules providing for a minimum of ten years' service for a pension and for compulsory retirement at the age of fifty-five and asking for further information on those points. By a letter written on behalf of the Secretary of State, the claimant was informed that the qualifying term for a pension was seven years and that the compulsory retiring age in the case of a judge was sixty-two, and the claimant accepted the appointment on those terms. In 1942, while the claimant was on leave in Australia, Malaya was occupied by the enemy and the letters patent appointing the claimant, of which there was no copy, and those relating to other judges, were lost or destroyed. On 7th April, 1942, the claimant was informed that the Secretary of State could not justify retaining him now that his post was necessarily in abeyance and that there was no alternative but to award him a pension on abolition of office, and the claimant's appointment, accordingly, ended on 7th July, 1942, seventeen months before his sixty-second birthday. The question whether the claimant was liable in law to be required to retire before reaching the age of sixty-two was referred to an arbitrator, who, subject to the decision of the court, awarded that he was so liable. On behalf of the claimant, it was contended that the principle of judicial independence embodied in the Act of Settlement, 1700, was to be regarded as part of the law of the Straits Settlements, and that therefore the claimant held office during good behaviour and could not be removed; alternatively, that if he had been appointed during pleasure, the correspondence between the claimant and the Secretary of State constituted a contract, enforceable against the Crown, that the Crown would employ him until he attained the age of sixty-two.

LORD GODDARD, C.J., said that it had been submitted that the provisions of the Act of Settlement relating to the tenure of a judge were so fundamental in the law of this country that they would form part of the law of a new colony when it was first settled. In his opinion, it was quite impossible to say that the particular provision of the Act of Settlement relating to English judges of the Superior Courts automatically became the law of the Straits Settlements or any other colony. While the section provided for judicial office being held during good behaviour, it also provided that a judge might be removed by an address of both Houses of Parliament; that appeared to be wholly inapplicable to a colonial judge. Royal letters patent of 1911, which were the instructions of the Crown to the governor of the Straits Settlement, provided that "the governor may in our name and on our behalf constitute" judges who "unless otherwise provided by law, shall hold their offices during our pleasure." In his opinion, it was clear that judges in Malaya held and always had held their office at the pleasure of the Crown. It was not fundamental to the office of a judge that he should possess the immunity with which it was found necessary to clothe the judges of the Supreme Court. It had been submitted that, even if the judges held office during pleasure, the effect of the correspondence was to constitute a contract between the Crown and the claimant that he should be retained in office until he attained the age of sixty-two. The court in question was the creation of a statute which gave the Crown complete freedom as to the constitution of the courts and its officers. He had difficulty, therefore, in seeing how the Secretary of State would have authority to bind the Crown. So to do would constitute a clog on the Crown's right to dismiss at pleasure. He regarded that right as a rule of law firmly established, and once it was established that the Crown had power to dismiss at pleasure that right could not be taken away by any contractual arrangement made by an executive officer or department of State. In his opinion, once a doctrine had become a rule of law the court was bound to apply it without inquiring into its origin; moreover, he could see no good reason why a judge appointed during pleasure should be in any different position, from that point of view, from any other person in the service of the Crown. He could not find that the doctrine had been laid down in such terms as would exclude a judge. Even if the Secretary of State had purported to contract with the claimant, he could not limit the power of the Crown to dismiss at pleasure; having appointed the claimant to hold office during pleasure, no correspondence which took place before or after the appointment could affect the terms of it. The correspondence did no more than inform the claimant of the general conditions applicable to the office. Award upheld.

APPEARANCES: *Sir Frank Soskice*, Q.C., *Edward Terrell* and *Kenneth Elphinstone* (*G. & G. Keith*); *Sir Lionel Heald*, Q.C., A.-G., and *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister at-Law] **[3 W.L.R. 331**

BUILDING: DEMOLITION: CONSTRUCTION OF REGULATIONS

Knight *v.* Demolition and Construction Co., Ltd.; Ransom *v.* Same

Parker, J. 22nd June, 1953

Actions.

The plaintiffs' husbands were engaged, in the course of their employment with the defendants, in the demolition of three blocks

of gas retorts. The retorts consisted of a series of retort tubes situated in vertical columns, surrounded by brickwork, which in turn was surrounded by brick arches which acted as a heat-resisting screen. The second block had been demolished except for two arches. The outer wall of one of the remaining arches was pulled down by means of a cable and winch and the plaintiffs' husbands were clearing away the debris from the archway when the adjoining wall collapsed, killing them. The plaintiffs claimed damages under the Fatal Accidents Acts and the Law Reform (Miscellaneous Provisions) Act, 1934, alleging that their husbands' deaths were due to a breach of duty at common law or, alternatively, to a breach of statutory duty under regs. 79 and 94 of the Building (Safety, Health and Welfare) Regulations, 1948, in failing respectively to place the demolition work under the supervision of a competent and experienced person and to take all practicable precautions to prevent danger to employees from collapse of the building. Regulation 79 provides: "(1) This regulation shall apply to the demolition of any building or substantial part of a building . . . (7) Before demolition is commenced and also during the progress of the work precautions shall, where necessary, be taken by adequate shoring or otherwise to prevent, as far as practicable, the accidental collapse of any part of the building or of any adjoining building the collapse of which may endanger any person employed." By reg. 94: "(1) All practicable precautions shall be taken . . . to prevent danger . . . through the collapse of any part of a structure during any temporary state of weakness . . . before the structure is completed. (2) Where any work is carried on which is likely to reduce . . . the security or stability of any part of any existing building or of a building in course of construction all practicable measures shall be taken . . . to prevent danger . . . from . . . collapse. . . ."

PARKER, J., said that the defendants were liable at common law, as, if they had consulted qualified engineers, they would have known that the remaining walls had become unstable. As to the regulations, reg. 94 applied *prima facie* if it was applicable to demolition work; para. (1) could not apply as it dealt with new constructional work. In para. (2) the reference to an existing building, and the language as a whole, indicated that the paragraph was concerned with alteration and not with demolition. Regulation 94 accordingly did not apply, so that the plaintiffs must rely on reg. 79 (7). The defendants contended that the retort block was not a "building." There were various authorities on that question, but in *Aylward* v. *Matthews* [1905] 1 K.B. 343 (a workmen's compensation case) it was held that it was a question of fact in any particular case whether a structure was a building, and that in deciding that question it was right to take into consideration the Act in question. It seemed that, in ordinary language, the retort blocks were buildings, and this was supported by the wording of reg. 79. "Where necessary," at any rate, covered a case where, if the dangers had been foreseen, as they should have been, a reasonable person would have taken precautions. "As far as practicable," as appeared from *Adsett* v. *K. & L. Steelfounders and Engineers, Ltd.* [1953] 1 W.L.R. 773; *ante*, p. 419, meant not "reasonably practicable," but "possible and practicable." The defendants were in breach of reg. 79 (7), and the plaintiffs succeeded. Judgment for the plaintiffs.

APPEARANCES: *R. F. Levy*, Q.C., and *Castle-Miller* (*Darracotts and Tringhams*); *G. Gardiner*, Q.C., and *G. C. Dare* (*Hepburns*); *F. W. Beney*, Q.C., and *M. Jukes* (*Tideman, Coules & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 981**

CONTRACT: ILLEGALITY: SALE OF UNROADWORTHY MOTOR CAR

Vinall *v.* Howard

Streatfeild, J. 29th June, 1953

Action.

Section 8 (1) of the Road Traffic Act, 1934, provides that "subject to the provisions of this section it shall not be lawful to sell . . . a motor vehicle in such a condition that its use on the road in that condition would be unlawful by virtue of the provisions of s. 3 of the principal Act" (the Road Traffic Act, 1930), and s. 8 (3) provides that any person who sells a motor vehicle in contravention of the provisions of the section shall be guilty of an offence. Section 8 (4) provides "that a person shall not be convicted of an offence . . . if he proves . . . that he had reasonable cause to believe that the vehicle . . . would not be used on a road in Great Britain or would not be so used until it had been put in a condition in which it might lawfully be so used." The plaintiff sold to the defendant a second-hand car which was unroadworthy as it infringed several of the provisions of the Motor Vehicles (Construction and Use) Regulations, 1951, made under s. 3 of the Road Traffic Act, 1930. The sale took place at the defendant's house, and it was arranged that the defendant should drive the plaintiff home, some ten miles. The defendant paid for the car by a cheque which was dishonoured and the plaintiff sued the defendant on the cheque, claiming alternatively the price of the car.

STREATFEILD, J., said that the defendant had pleaded that the contract was illegal, and consequently unenforceable, in that s. 8 prohibited the sale of unroadworthy cars. An examination of that section showed that a man could not be convicted of the offence of selling an unroadworthy vehicle if he could show that he had reasonable cause to believe that the vehicle would not be used on the road until it had been put into a proper condition. The question was, whether the sale was illegal in the sense that the plaintiff would not have had a defence if he had been prosecuted. On the facts, it was clear that the plaintiff knew that the defendant would have to use the car to drive him home, the car being then, as the plaintiff knew, in such a condition as to contravene the regulations. It followed that the plaintiff would have had no defence, if prosecuted; and the sale of the car was unlawful. Having regard to the authorities, and in particular to *Commercial Air Hire, Ltd.* v. *Wrightways, Ltd.* [1938] 1 All E.R. 89, it was clear that the court must take cognisance of such an illegality, so that the plaintiff was unable to recover in respect of a contract so tainted. Judgment for the defendant. No order as to costs.

APPEARANCES: *D. Collard* (*Curwen, Carter & Evans*); *J. Gazdar* (*Vanderpump & Sykes*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 987**

PROBATE, DIVORCE AND ADMIRALTY DIVISION

DIVORCE: EVIDENCE: ADMISSIBILITY: STATEMENT IN DOCUMENT

Ozzard-Low *v.* Ozzard-Low and Wonham

Davies, J. 8th June, 1953

Defended divorce suit.

A husband alleged in his petition that his wife had committed adultery in Rangoon, Burma, with a named co-respondent, or alternatively with a man unknown in 1951, and application was made on his behalf at the hearing for leave to read the affidavits of three Burmese servants in support of the charge of adultery. The application had previously been made to the registrar, who had adjourned it to the trial judge; and in an affidavit in support of that application, the husband said that after he had parted from his wife the servants had given him certain information. He had consulted the British consul as to the manner in which the testimony of these witnesses should be perpetuated, and the consul had made arrangements for the witnesses to be examined by an independent advocate nominated by the consul before a notary public in Rangoon on oath and for their testimony to be recorded in the form of affidavits. The husband further stated that he had been present when the witnesses gave their evidence, and that the certificate of the notary public had been certified and legalised by the consul. He also said that he had since tried to trace the witnesses, without success, and believed them to have left Rangoon. He submitted that great expense and delay would be caused in searching for the witnesses. The report is confined to the question whether or not these statements were admissible at the hearings under s. 1 (1) of the Evidence Act, 1938.

DAVIES, J., said that it was admitted that the husband had made no attempt to bring the Burmese servants to England; he (the husband) had taken the view that on the ground of expense it was not reasonably practicable to do so. No application had been made for an order that the evidence should be taken before an examiner. His lordship accepted the submission that it was not reasonably practicable to secure the attendance of the witnesses in court, and said that it would therefore seem that the proviso to s. 1 (1) of the Evidence Act, 1938, was applicable. But it had been contended that "attendance" in the subsection meant not only attendance at the hearing, but attendance as a witness at any time in the suit; and that if it had been reasonably practicable to secure attendance before an examiner or by other means to give oral evidence, the statement was not admissible under the proviso. In his (his lordship's)

judgment the words of the proviso imposed upon the court the duty of deciding whether, at the moment when the statement was tendered in evidence, the maker was beyond the seas and it was not reasonably practicable to secure his attendance. His lordship further held that, if the conditions laid down by the statute were satisfied, a judge sitting alone had no discretionary power to reject it, and said that he was unable to follow the decision of Simonds, J., in *Infields, Ltd.* v. *Rosen* [1939] 1 All E.R. 121. His lordship added that, although the documents were admissible, the court would exercise caution in regard to such statements, and to the importance to be attached to them, in accordance with s. 2 of the Act. Statements admitted.

APPEARANCES: *Gilbert Beyfus*, Q.C., and *D. Armstead Fairweather* (*W. F. Foster, Hedge & Clare*); *R. J. Temple*, Q.C., and *H. S. Law* (*Butt & Bowyer*); *Melford Stevenson*, Q.C., and *L. G. Scarman* (*Loxley & Preston*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 374**

DIVORCE: ADULTERY: HOTEL EVIDENCE

Raspin *v.* Raspin

Karminski, J. 8th June, 1953

Undefended petition for divorce.

The parties were married in 1937 and the wife left the matrimonial home on 30th January, 1953, after her husband had handed her an hotel bill, and said that he had spent the previous night at an hotel in London with a woman, and committed adultery. She filed a petition dated 3rd March, 1953, alleging frequent adultery and adultery at the hotel on 29th to 30th January, 1953, with a woman whose name and identity were unknown. At the hearing on 6th May, 1953, the wife told Karminski, J., that her husband did not tell her the woman's full name, and that, when she asked who the woman was, he had said that he was not going to tell her. An inquiry agent, who proved a confession by the husband of adultery on the night in question, said that the husband when asked for the name of the woman had replied that he did not know and that he had casually met the woman in a restaurant. A hotel waiter gave evidence that he had taken tea to the bedroom, which was occupied by the husband and a woman. He had later served breakfast: the husband was then dressed, but the woman was in bed.

KARMINSKI, J., said that suspicions were always slightly aroused if a husband came back from a visit to London and presented an hotel bill to his wife. The wife had given evidence that the husband would not tell her the name, the inquiry agent that the husband had said that he did not know it, which was not quite the same. Sometimes a husband went through the "motions" of committing adultery to shield the real woman in the case; and he (his lordship) was concerned as to whether the case should be adjourned for further inquiries into the husband's mode of life in order to ascertain whether the true case was before the court, or a mere cover. It might be that the husband was a person who picked up unknown women, although two associations referred to in evidence showed that he was not of an entirely promiscuous nature; but the court must be satisfied that adultery had been committed and that the husband had not merely been "putting on an act" for the purpose of providing evidence. Notwithstanding *Woolf* v. *Woolf* [1931] P. 134, the court was not bound to find adultery. (After further submissions, his lordship said that he would adjourn the case for additional inquiries.) The case was mentioned later in the day, when his lordship was informed that the wife had learnt that her husband had been named as co-respondent in another suit in respect of adultery committed after the petition had been settled, with a woman who lived in a flat above the matrimonial home. His lordship adjourned the matter, giving leave for the additional allegation to be made subject to proper service upon the named woman. On 8th June, 1953, his lordship found adultery with the named woman on 27th and 28th March, 1953, and on 15th May 1953, proved, and granted a decree *nisi*. He said that he was not always prepared to make a finding of adultery where a hotel bill had been sent, and a waiter called to say that two people had been in a bedroom together, but where there was no background of an adulterous association. Nothing had been done in the present case until anxiety had been shown, and steps taken to find the true position. The realities of the case seemed now to be entirely different from that originally presented, and he had little doubt that what the husband had wanted was to screen the real adulterous association with a known woman. His lordship added that, in his view, the solicitors concerned had not been guilty of any improper conduct.

APPEARANCES: *B. Sheen* (*Blundell, Baker & Co.*, for *Wright, Atkinson & Pearson*, Keighley.)

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 343**

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

New Towns Bill [H.C.] [10th July.
Valuation for Rating Bill [H.C.] [10th July.

Read Second Time:—

Army and Air Force (Annual) Bill [H.C.] [9th July.
Rhodesia and Nyasaland Federation Bill [H.C.] [7th July.

Read Third Time:—

Bradford Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [9th July.
British Transport Commission Order Confirmation Bill [H.C.] [9th July.
Dogs (Protection of Livestock) Bill [H.C.] [9th July.
Land Drainage (Surrey County Council (Rive Ditch Improvement)) Provisional Order Bill [H.C.] [9th July.
National Insurance Bill [H.C.] [9th July.
Newport Corporation Bill [H.C.] [6th July.
Road Transport Lighting (Amendment) Bill [H.C.] [7th July.
School Crossing Patrols Bill [H.L.] [9th July.
Tees Valley Water Bill [H.C.] [9th July.
Walsall Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [9th July.

B. QUESTIONS

LEGAL AID: STOPPING FRUITLESS ACTIONS

The LORD CHANCELLOR said his attention had been drawn to a case in which Roxburgh, J., had said that the case was one in which neither party would gain anything, but that it was inevitable that the taxpayer would lose more and more each day, as both sides were legally-aided, and that there ought to be devised some machinery whereby some body of persons should have the right to bring pressure to bear to stop actions which were going to be barren of any worthwhile results. He had referred the matter to The Law Society and expected their report shortly. [7th July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Isle of Man (Customs) Bill [H.C.] [9th July.
To amend the law with respect to customs in the Isle of Man.

Read Second Time:—

Monopolies and Restrictive Practices Commission Bill [H.C.] [10th July.

Read Third Time:—

Marshall Aid Commemoration Bill [H.C.] [10th July.
Saint Oswald Estate Bill [H.L.] [6th July.
Therapeutic Substances (Prevention of Misuse) Bill [H.L.] [10th July.

B. QUESTIONS

MARRIED WOMEN (DOMICILIARY LAW)

Mrs. CORBET asked the Attorney-General if he would introduce legislation in the near future to amend the law with regard to the domicile of married women so as to remove the disabilities suffered by them under the present law, particularly as to status, matrimonial rights and the right to, and devolution of, their property.

The ATTORNEY-GENERAL said that some aspects of the law relating to the domicile of married women were now being considered by the Royal Commission on Marriage and Divorce, and the law relating to domicile generally was being considered by the Standing Committee on Private International Law appointed by the Lord Chancellor. When the recommendations of these bodies had been received the question of legislation would be considered. [6th July.

CROWN (PRIVATE ACTIONS)

The ATTORNEY-GENERAL stated that approximately 520 actions had been commenced against the Crown in the High Court and county court during the twelve months ending 31st May, 1953. [6th July.

PROSPECTIVE TENANTS (FINANCIAL CONDITIONS)

Asked whether he was aware of the practice of some landlords and house agents to require from prospective tenants advance deposits of rent, payments for furniture and other financial conditions, and whether he would investigate these practices, Mr. MARPLES said that to demand a premium or an excessive payment for furniture was already illegal under s. 3 of the Landlord and Tenant (Rent Control) Act, 1949, and the Minister had not received many representations on this point last year; he had received a number of representations about demands for rent in advance for long periods. On inquiring, he found that most of the cases came from bogus letting agencies. It was hoped that the Accommodation Agencies Act, 1953, would end the activities of these agencies. [7th July.

DESERTERS (CORONATION AMNESTY)

Mr. NIGEL BIRCH said that the Coronation amnesty to persons who deserted after September, 1939, was still available. It could not, however, be extended to persons who had deserted before that date. [8th July.

WRONGFUL IMPRISONMENT (EX GRATIA PAYMENTS)

Sir HUGH LUCAS-TOOTH said that *ex gratia* payments were made from time to time for a variety of reasons, but that during the past year none had been made in respect of wrongful imprisonment. Asked why the Home Secretary was so mean and heartless in cases of this kind, Sir Hugh Lucas-Tooth said that the member would no doubt, if he wished to raise particular cases, put down a question or write to the Home Secretary or himself. [9th July.

STATUTORY INSTRUMENTS

East of Snaith—York—Thirsk—Stockton-on-Tees—Sunderland Trunk Road (Seaton Bank Railway Bridge, Ryhope, Diversion) Order, 1953. (S.I. 1953 No. 1029.)

Eggs (Amendment No. 2) Order, 1953. (S.I. 1953 No. 1034.)

Goods Vehicles (Licences and Prohibitions) (Amendment) Regulations, 1953. (S.I. 1953 No. 1045.) 6d.

Grangemouth Water Order, 1953. (S.I. 1953 No. 1039 (S.85).)

Herring Industry (Grants for Fishing Vessels and Engines) Scheme, 1953. 6d.

Local Government Superannuation (Administration) (Amendment) Regulations, 1953. (S.I. 1953 No. 1047.)

London—Edinburgh—Thurso Trunk Road (Wetherby By-Pass) Order, 1953. (S.I. 1953 No. 1031.)

Merchant Shipping Act, 1948 (Commencement No. 2) Order, 1953. (S.I. 1953 No. 1035 (C.2).)

Merchant Shipping (Crew Accommodation) Regulations, 1953. (S.I. 1953 No. 1036.) 1s. 8d.

Draft **National Health Service** (Scotland) (Superannuation) Amendment Regulations, 1953. 5d.

Draft **National Insurance** (Industrial Injuries) (Colliery Workers Supplementary Scheme) Amendment Order, 1953. 11d.

Retention of Cables and Main under Highway (Orkney) (No. 2) Order, 1953. (S.I. 1953 No. 1032.)

Retention of Cables and Pipe under Highways (Kent) (No. 3) Order, 1953. (S.I. 1953 No. 1021.)

Retention of Cables, Pipes and Main under and over Highways (Warwickshire) (No. 1) Order, 1953. (S.I. 1953 No. 1044.)

Retention of Mains and Pipe under Highway (Cornwall) (No. 2) Order, 1953. (S.I. 1953 No. 1028.)

Retention of Mains and Pipes under Highways (Orkney) (No. 1) Order, 1953. (S.I. 1953 No. 1023.)

Safeguarding of Industries (Exemption) (No. 5) Order, 1953. (S.I. 1953 No. 1046.)

Stopping up of Highways (Denbighshire) (No. 1) Order, 1953. (S.I. 1953 No. 1042.)

Stopping up of Highways (Essex) (No. 3) Order, 1953. (S.I. 1953 No. 1049.)

Stopping up of Highways (Kent) (No. 6) Order, 1953. (S.I. 1953 No. 1027).

Stopping up of Highways (London) (No. 7) Order, 1953. (S.I. 1953 No. 1020.)

Stopping up of Highways (London) (No. 8) Order, 1953. (S.I. 1953 No. 1043.)

Stopping up of Highways (Middlesex) (No. 2) Order, 1953. (S.I. 1953 No. 1026.)

Stopping up of Highways (Warwickshire) (No. 5) Order, 1953. (S.I. 1953 No. 1025.)

Stopping up of Highways (Worcestershire) (No. 5) Order, 1953. (S.I. 1953 No. 1030.)

Stopping up of Highways (Worcestershire) (No. 6) Order, 1953. (S.I. 1953 No. 1022.)

Sugar (Rationing) (Amendment No. 2) Order, 1953. (S.I. 1953 No. 1052.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102–103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped, addressed envelope.

Rent Restriction—"MEMBER OF THE TENANT'S FAMILY RESIDING WITH HIM"—MARRIED DAUGHTER LIVING WITH HER FAMILY IN SAME HOUSE AS HER FATHER

Q. We act for the landlord of a house within the Rent Acts. The tenant (from 1912) died some months ago, a widower. He had a number of children, all of whom left home with the exception of one girl who lived at home with her parents until she married about twelve years ago. Since her marriage she continued to live with her parents and subsequently her father alone, but she lived there with her husband and they have children. They do not occupy any particular part of the house and it is not known what, if anything, she paid the father for living there with him. Since his death she and her family have continued to live there but no rent has yet been accepted from her. It is proposed to give notice to quit to the personal representatives of the father to put an end to the contractual tenancy, and no doubt (unless the tenancy has already been assigned to her by such personal representatives) she will claim to remain there under the provisions of the Rent Acts as a member of the tenant's family living with him at his death. The point upon which we should like your views is whether it is correct to say that she was in this position, since it appears that she was not living with her father but with her father and her family. It is true she was living in the same house as her father but not as a member of his family.

A. The point appears to be a novel one, it being (i) admitted that the potential claimant is a member of the deceased's tenant's family; (ii) admitted that she resided in the dwelling-house for six months preceding his death; but (iii) asserted that she did not reside *with* him. The existing authorities are all concerned with (i), but as regards (ii) it is suggested (by Megarry) that a claimant might succeed if neither he (or she) nor the deceased tenant had occupied the dwelling-house for six months, but had lived together part of the time elsewhere. As far as the statute goes, this seems quite sound, as s. 12 (1) (*g*) of the 1920 Act plus s. 13 of the 1933 Act do not stipulate that the "residing with" shall have been on the premises, and a tenant can die before his tenancy has lasted six months. We consider that some importance might be attached to the above on it being argued that it shows that "residing *with*" means something more than "residing in the dwelling-house at the same time as," which is essentially the point; but as far as reported decisions go, the only support we can suggest is to be found in the following passage from Cohen, L.J.'s judgment in *Brock* v. *Wollams* [1949]

2 K.B. 388 (C.A.): "I think the question the learned county court judge should have asked himself was: Would an ordinary man, addressing his mind to the question whether Mrs. Wollams was a member of the family or not, have answered 'yes' or 'no'?"—substituting, of course, "whether [the daughter] was residing with [the tenant]" for "whether Mrs. Wollams was a member of, etc."

Income Tax—Uncashed Interest Coupons

Q. Clients of ours have discovered a certain number of 3½ per cent. Conversion Loan Bonds and 4 per cent. Victory Bonds with all the uncashed interest coupons attached back to 1930. (*a*) Should the owner have entered the interest on these coupons in his income tax returns for the respective years from 1930 onwards (notwithstanding non-encashment), and if so what is the liability for default? (*b*) By reference to what year or years should income tax and sur-tax payable on the interest be calculated when the coupons are encashed?

A. This case is quite different from that in which arrears of interest are paid in bulk under a scheme (as in *Leigh* v. *Inland Revenue Commissioners* [1928] 1 K.B. 73). In such cases the income is not available to the taxpayer until the scheme is formulated; here the income was available from year to year but the taxpayer neglected to collect it. It is really not unlike a case where the taxpayer receives a cheque for his interest but neglects to present it for payment until a subsequent year of assessment: this obviously does not affect liability. In our view the interest ought to have been returned from year to year whether or not the coupons were cashed in that year: it follows that income tax and sur-tax are payable at the rates applicable from year to year from 1930 onwards. We have not been able to discover any authority precisely in point, but *Spence* v. *Inland Revenue Commissioners* (1941), 24 Tax Cas. 311, seems strongly to support that view. Penalties for failure to deliver a proper return are to be found in s. 23 of the Income Tax Act, 1952. In practice the Crown will almost always accept a composition and the amount which the taxpayer is required to pay is dependent upon the degree of his guilt. Where the non-disclosure is accidental and where a voluntary disclosure is made immediately upon his discovering the facts the Crown will usually waive the penalty but will insist on interest at 3 per cent. on the money unpaid. This case is unusual in that it is the Crown and not the taxpayer who has enjoyed the use of the money and we should expect the authorities to take a generous view if the whole matter is put before them.

Will—General Power of Appointment—Lapse of Appointment—Wills Act, 1837, s. 27

Q. *T* died before 1925, having by her will appointed *X* and *Y* executors and trustees thereof (which was duly proved by them), and, *inter alia*, gave a legacy of £*x* to her trustees upon trust for investment and to pay the income to *A* and after her death in trust for such person or persons as *A* by her will shall appoint (there are no other provisions, e.g., on failure or in default of appointment), and *T's* will contained a gift of the residue to *X*. *A* has recently died, having by her will, *inter alia*, duly exercised the power of appointment under *T's* will in favour of *B*, who predeceased *A*. Who is in the circumstances entitled to the benefit of the capital now comprising the settled legacy fund?

A. In our opinion the settled legacy fund will pass under any general residuary bequest contained in *A's* will in accordance with s. 27 of the Wills Act, 1837. The fact that a specific appointment has been made in favour of *B* and has failed by reason of lapse does not amount to a "contrary intention" within the section (*Re Spooner's Trust* (1851), 2 Sim. (N.S.) 129; *Bush* v. *Cowan* (1863), 32 Beav. 228; Jarman on Wills, 7th ed., vol. II, p. 786). If *A's* will contains no general residuary bequest, the settled fund will pass as in default of appointment to *X* as residuary legatee of *T* (*Laing* v. *Cowan* (1857), 24 Beav. 112; Jarman, p. 793).

Estate Duty—Oral Family Agreement—Deceased holding Proceeds of Sale of Property for Daughter on I.O.U.

Q. In 1930 *A* gave Blackacre to his daughter *B* as a wedding present. In 1933, as a result of financial depression, *A* asks *B* to give Blackacre to *C*, the wife of *A*, who had paid some of his debts. *B* conveys Blackacre to *C* "for natural love and affection," and a family agreement (not evidenced in writing) was made that when Blackacre is sold the proceeds of sale shall be paid to *B*. In 1947 Blackacre is sold and *C* gives *B* an I.O.U. for the full amount of the proceeds of sale. In 1952 *C* dies. (*a*) Is the debt deductible for estate duty purposes, or (*b*) did the oral agreement in 1933 create no more than a moral obligation, thereby making the I.O.U. evidence of a transaction without full consideration and thereby becoming a gift *inter vivos*?

A. We do not think that this matter is best approached from the direction indicated in the question. Where there is a voluntary conveyance of property from one to another there is a presumption of resulting trust for the donor (see Emmet on Title, 13th ed., vol. 2, p. 1190). Such presumption may be rebutted by a countervailing presumption of advancement (which is not operative between mother and daughter) or by evidence of intention. In this case the evidence all goes to support and not to rebut the presumption; there is evidence of the existence of the oral family agreement that the proceeds of sale of the house were to be held for *B*, and there is evidence that this was acknowledged at the date of sale. It appearing, however, that *B* was prepared not to enforce the payment of those moneys at once the matter was, as it were, placed on record by the issue of the I.O.U. In our opinion, therefore, the executors should contend that Blackacre or its proceeds of sale were, from 1933 onwards, held by *C* as trustee for *B*, and as such no beneficial interest passed on *C's* death. It may well be that *C* had at some time some sort of lien over Blackacre for *A's* debts which she had paid, but we do not know enough about the family arrangement to go into details. There does not seem to be any force in the contention, which may be advanced, that *C* had a life interest in the trust funds. It may be that she enjoyed their use in practice, but she did so only on sufferance and could have been divested of them at any time on the *Saunders* v. *Vautier* (1841), 10 L.J. Ch. 354, principle.

Trustee—Power to advance Capital—Whether Payment of School Fees a "Benefit"

Q. A bank, as trustees, hold a sum of money on trust for an infant. The circumstances are such that they would be entitled to advance to one-half of the capital providing they are satisfied that the advance is "for the advancement or benefit" of the infant. The capital is required to help to pay public school fees, the income from the capital being inadequate. The bank seem to doubt that they have power to advance for such a purpose, presumably because s. 31 of the Trustee Act, in reference to the application to income, refers to "maintenance, education or benefit" which apparently the bank think separates education from benefit. It is our opinion that this is not so and that, provided the advance is for a definite purpose of the infant's benefit, the advance can be made, and we think education must be for his benefit. Do you agree?

A. Although the words "advancement or benefit" in the statutory or an express power confer a wide discretion on trustees, we have not found a case in which these words were held to authorise the application of capital for the payment of an annual or recurring expense such as school fees. The cases are collected in a note in Lewin on Trusts, 14th ed., p. 328, and "advancement or benefit" has been held to include the purchase of a commission in the Army (*Cope* v. *Wilmot* (1772), Amb. 704); establishment in business (*Phillips* v. *Phillips* (1853), Kay 40); stocking a farm (*Re Household* (1884), 27 Ch. D. 553); binding apprentice (*Swinnock* v. *Crisp* (1681), Freem. Ch. 78); payment of debts (*Lowther* v. *Bentinck* (1874), L.R. 19 Eq. 166); payment on marriage (*Lloyd* v. *Cocker* (1860), 27 Beav. 645); payment to trustees of a marriage settlement (*Roper-Curzon* v. *Roper-Curzon* (1871), L.R. 11 Eq. 452); and assisting the cost of emigration (*Re Long's Settlement* (1868), 38 L.J. Ch. 125). It will be seen that all the authorised cases are in respect of single items unlikely to recur. In approaching the matter we think that the trustees must first consider whether the proposed expenditure is a proper one for which to break into capital. If they decide that it is, then they can apply up to one-half of the beneficiaries' presumptive or vested interest if they are further satisfied that the application will be for the advancement or benefit of the infant. We consider that this view is supported by the difference in the wording between ss. 31 and 32 of the Trustee Act, 1925, which difference seems to us to point to the conclusion that the Act indicates that maintenance or education can never be proper objects of an application of capital by reason of the omission of these words from s. 32. An express power can, of course, authorise application of capital for maintenance and education, but in the absence of these words in the present case we do not consider that the bank should pay or contribute to the school fees without an order of the court (see an article at 95 Sol. J. 101).

NOTES AND NEWS

Honours and Appointments

Mr. DENNIS PARKER HARRISON has resigned his appointment as Deputy Town Clerk of Weymouth to become Deputy Town Clerk of Maidstone. His place at Weymouth has been filled by Mr. REGINALD WILLIAM JAMES TRIDGELL, already a member of the Weymouth staff.

Mr. STUART LLOYD JONES, Deputy Town Clerk of Nottingham, has been appointed Town Clerk of Plymouth to replace Sir Colin Campbell, who retires in September.

Mr. K. LOMAS, of Wakefield Corporation Town Clerk's Department, has been appointed Assistant Solicitor to Warrington Corporation.

Miscellaneous

DOUBLE TAXATION RELIEF: TABLES OF EFFECTIVE TAX RATES

It has been decided to make available to the public the tables which are used in tax offices for calculating the effective rates of tax. The tables for 1952–53 are on sale at H.M. Stationery Office, price 9d., by post 10½d. It is thought that the use of these tables will result in a considerable saving in time to professional advisers who have a number of cases involving double taxation relief.

DEVELOPMENT PLANS

BARROW-IN-FURNESS DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Barrow-in-Furness. The plan, as approved, will be deposited in the Council Offices for inspection by the public.

CITY OF LINCOLN DEVELOPMENT PLAN

A notice in the *London Gazette* for 7th July states that, on 12th May, 1953, the Minister of Housing and Local Government approved (with modifications) the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the City Engineer's Department, Corporation Offices, Silver Street, Lincoln. The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested between 9 a.m. and 5.30 p.m. on Mondays to Fridays, and 9 a.m. and 12 noon on Saturdays. The plan became operative as from 19th May, 1953, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 19th May, 1953, make application to the High Court.

[See p. 493, *ante*, for a notice regarding proposals for an addition to this plan.]

ST. HELENS DEVELOPMENT PLAN

On 27th June, 1953, the Minister of Housing and Local Government approved with modifications the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the Town Clerk's Office, Town Hall, St. Helens, and is open for inspection free of charge by all persons between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays and 9 a.m. and 12 noon on Saturdays. The plan became operative as from 10th July, 1953, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulations made thereunder has not been complied with in relation to the approval of the plan, he may within six weeks from 10th July, 1953, make application to the High Court.

The next Quarter Sessions for the County Borough of Smethwick will be held at the Law Courts, Crocketts Lane, Smethwick, on Tuesday, 11th August, at 10.30 a.m.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

SURVEY OF PUBLIC RIGHTS OF WAY

The following notices of the preparation of draft maps and statements under s. 27 of the above Act, or of modifications to draft maps or statements already prepared, have appeared since the tables given at pp. 109, 175, 252, 303 and 406, *ante*.

Surveying Authority	Districts covered by draft map and statement	Date of notice	Last date for receipt of representations or objections
Barrow-in-Furness County Borough Council	The Borough	22nd May, 1953	29th September, 1953
Bedfordshire County Council	Area of the Council	19th June, 1953	14th November, 1953
Derbyshire County Council	Ilkeston Borough, Heanor, Long Eaton, and Shardlow Urban Districts	28th May, 1953	30th September, 1953
Gloucestershire County Council	Cheltenham Rural District	21st May, 1953	29th September, 1953
	Cirencester Rural District	21st May, 1953	29th September, 1953
	East Dean Rural District	19th May, 1953	29th September, 1953
Hampshire County Council	Havant and Waterloo Urban District and New Forest Rural District	May, 1953	3rd October, 1953
Lancashire County Council	Administrative County of Lancaster	10th June, 1953	30th October, 1953
Lincoln County Council — Parts of Kesteven	Stamford Borough, Bourne Urban District, and South Kesteven Rural District	27th May, 1953	10th October, 1953
Manchester City Council	Area of the Council: modifications to draft map and statement of 23rd December, 1952	7th July, 1953	4th August, 1953
Norfolk County Council	Diss, Downham Market, East Dereham, North Walsham, Sheringham and Wymondham Urban Districts	30th June, 1953	30th October, 1953
Oxfordshire County Council	Administrative County of Oxford	11th June, 1953	1st November, 1953
Salop County Council	Bridgnorth and Ludlow Boroughs, Church Stretton Urban District, Bridgnorth Rural District (all parishes), Ludlow Rural District (all parishes), and the Parishes of All Stretton and Cardington in Atcham Rural District	26th June, 1953	31st October, 1953
Somerset County Council	Shepton Mallet Urban and Rural Districts	29th June, 1953	31st December, 1953
Surrey County Council	Administrative County of Surrey: further modifications to draft map and statement of 29th April, 1952	30th June, 1953	10th August, 1953
West Riding of Yorkshire County Council	Administrative County of the West Riding of Yorkshire, except for the central area of Keighley Borough	5th June, 1953	20th October, 1953
West Suffolk County Council	Bury Saint Edmunds Borough, Haverhill Urban District, and Cosford and Thingoe Rural Districts	5th June, 1953	18th October, 1953
	Newmarket Urban District and Melford and Mildenhall Rural Districts	10th July, 1953	27th November, 1953
Westmorland County Council	Appleby Borough, and North Westmorland Rural District	24th June, 1953	31st October, 1953
Worcestershire County Council	Evesham and Halesowen Boroughs, Stourport-on-Severn Urban District, and Evesham, Martley and Tenbury Rural Districts	16th June, 1953	30th October, 1953
	Stourbridge Borough, Bromsgrove Urban and Rural Districts	10th July, 1953	6th August, 1953

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